

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

09:27:42 UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CRIM. NO. 2014-54
)
)
SHERRYMAE MORALES,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT

JURY SELECTION & TRIAL

08:32:29 Monday, June 29, 2015

BEFORE: THE HONORABLE CURTIS V. GOMEZ
District Judge

08:41:56 APPEARANCES: OFFICE OF THE UNITED STATES ATTORNEY
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For the Government

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For the Defendant

COURT REPORTER: CHANDRA R. KEAN, RMR
Official Court Reporter
Virgin Islands District Court
St. Thomas, Virgin Islands

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PROCEEDINGS

(Court called to order at 9:48 a.m. in USA v
Morales.)

(Jury panel sworn.)

THE CLERK: United States of America versus
Sherrymae Morales.

MR. POTTER: Good morning, Your Honor.

Good morning, members of the jury, of the panel.

Good morning, Defense Counsel.

Everard Potter on behalf of the United States.

THE COURT: Good morning, Attorney Potter.

MR. POTTER: Good morning, Judge.

MR. JUPITER: Good morning, Your Honor.

Good morning, ladies and gentlemen.

Good morning, defense -- prosecution table.

Omodare Jupiter, who is -- on behalf of Ms.
Sherrymae Morales, who is present. And I also have
Ms. Liz Delosa, our paralegal.

THE COURT: Good morning, Attorney Jupiter.

Good morning, ladies and gentlemen.

JURY SELECTION

THE COURT: We are here for jury selection. We
are at the stage of the trial that we refer to as voir
dire. That is, I have a series of questions that I need

09:49:23 1 to ask you.

09:49:24 2 If you have a yes answer, that is, an affirmative
09:49:27 3 answer, stand up, hold up your number, then I'll ask you
09:49:30 4 to state what the answer is to the question.

09:49:32 5 All right. For purposes of voir dire, I only need
09:49:35 6 to hear answers at this time from the people who are in
09:49:38 7 the jury box and the folks on this side of the
09:49:41 8 courtroom.

09:49:41 9 For the rest of you, I don't need your answers at
09:49:44 10 this point.

09:49:44 11 If there is a need for your participation in the
09:49:49 12 jury selection process any further, we'll let you know.

09:49:52 13 But you need to pay attention to the questions,
09:49:54 14 though, because if I do need to call you as a juror,
09:49:59 15 I'll ask you if you had any yes answers to any of the
09:50:02 16 questions that I posed.

09:50:03 17 All right. We'll begin now with the introduction
09:50:07 18 of the lawyers.

09:50:08 19 You have heard the lawyers introduce themselves to
09:50:11 20 you.

09:50:11 21 Does anyone have a relationship by blood, marriage,
09:50:14 22 or business with Attorney Everard Potter.

09:50:23 23 (No response.)

09:50:23 24 THE COURT: The defense counsel in this case is
09:50:26 25 Attorney Omodare Jupiter.

09:50:27 1 Does anyone have a relationship by blood, marriage
09:50:30 2 or business with Attorney Jupiter? He is the Federal
09:50:30 3 Public Defender.

09:50:30 4 (No response.)

09:50:38 5 THE COURT: Attorney Jupiter, can you once
09:50:40 6 again introduce us to your client, please.

09:50:43 7 MR. JUPITER: Good morning, again. Ladies and
09:50:44 8 gentlemen, this is Sherrymae Morales.

09:50:47 9 THE COURT: Does anyone have a relationship by
09:50:49 10 blood, marriage or business with Ms. Sherrymae Morales?

09:50:56 11 Juror 58. Stand up and tell us what your
09:50:59 12 relationship is.

09:51:03 13 PROSPECTIVE JUROR: She was my company
09:51:04 14 commander in the military police unit National Guard.

09:51:07 15 THE COURT: How long ago was that, sir?

09:51:11 16 PROSPECTIVE JUROR: A little over ten years
09:51:15 17 ago.

09:51:15 18 THE COURT: Okay. Do you maintain a
09:51:16 19 relationship with Ms. Morales at this time?

09:51:19 20 PROSPECTIVE JUROR: No, sir.

09:51:19 21 THE COURT: Is there anything in that past
09:51:21 22 relationship that would prevent you from listening to
09:51:24 23 the evidence in this case fairly and impartially?

09:51:25 24 PROSPECTIVE JUROR: No, sir.

09:51:26 25 THE COURT: Is there anything in that past

09:51:28 1 relationship that would prevent you from following my
09:51:30 2 instructions on the law?

09:51:31 3 PROSPECTIVE JUROR: No, sir.

09:51:31 4 THE COURT: All right. Thank you. You can
09:51:34 5 have a seat.

09:51:35 6 This trial is anticipated to last today, tomorrow,
09:51:38 7 and perhaps a portion of Wednesday.

09:51:40 8 Does anyone have any prepaid confirmed travel plans
09:51:45 9 for today, Monday, tomorrow, Tuesday, or Wednesday?

09:51:52 10 Juror 74, stand up and tell us what plans.

09:51:56 11 PROSPECTIVE JUROR: I have a reservation to St.
09:52:00 12 Thomas for a week with my family.

09:52:02 13 THE COURT: Those are paid?

09:52:05 14 PROSPECTIVE JUROR: Yes, Your Honor.

09:52:05 15 THE COURT: And what day of travel?

09:52:07 16 PROSPECTIVE JUROR: July 1st to July 7th.

09:52:12 17 THE COURT: All right. Thank you.

09:52:18 18 Let me ask the government to bring its witnesses
09:52:21 19 into the courtroom.

09:52:23 20 MR. POTTER: Yes, Judge.

09:52:58 21 THE COURT: Let's have the witnesses line up
09:53:00 22 right here along this edge here.

09:53:02 23 Come into the well, witnesses.

09:53:05 24 Attorney Potter, have your agent direct the
09:53:07 25 witnesses into the well, please.

09:53:19 1 Form a semi-circle so the jurors can see you.

09:53:41 2 Attorney Potter, if you can introduce the witnesses
09:53:44 3 to the jurors, starting with the witness who is closest
09:53:47 4 to me.

09:53:48 5 MR. POTTER: Yes, Judge. The adjutant general,
09:53:58 6 Renaldo Rivera, Colonel Linda Lobbenmeick --
09:54:06 7 Lobbenmeier.

09:54:07 8 Colonel Linda Cills.

09:54:17 9 THE COURT: Why don't we do it this way. Why
09:54:19 10 don't we have the witnesses introduce themselves. Just
09:54:22 11 tell us your name. Raise your hand and introduce
09:54:25 12 yourself to the jury.

09:54:27 13 THE WITNESS: Good morning. Renaldo Rivera,
09:54:31 14 the adjutant general.

09:54:33 15 THE WITNESS: Colonel Deborah Lobbenmeier.

09:54:37 16 THE WITNESS: Good morning. Colonel Linda
09:54:38 17 Cills.

09:54:39 18 THE WITNESS: Diane Mathis, USAA Federal
09:54:43 19 Savings Bank.

09:54:43 20 THE WITNESS: Good morning. Marise James.

09:54:45 21 THE WITNESS: Good morning. Dazarene Lescott.

09:54:48 22 THE WITNESS: Baron Hignite, Colonel, and I'm
09:54:53 23 the manager of MPS Corp.

09:54:56 24 THE WITNESS: Kai Schjang.

09:54:56 25 THE WITNESS: I'm Aubrey Ruan, Jr.

09:55:03 1 THE COURT: Any other witnesses, Attorney?

09:55:06 2 MR. POTTER: We have one more witness, Your
09:55:08 3 Honor. General Lewis.

09:55:10 4 THE COURT: You need to give us a full name.

09:55:14 5 MR. POTTER: Elton Lewis.

09:55:20 6 THE COURT: All right.

09:55:20 7 Does anyone have a relationship by blood, marriage
09:55:23 8 or business with any of the witnesses who you've just
09:55:28 9 been introduced?

09:55:30 10 Juror 26, tell us your relation.

09:55:34 11 PROSPECTIVE JUROR: I'm related to Attorney
09:55:37 12 Marise James, is my cousin.

09:55:39 13 THE COURT: Okay. Is there anything in that
09:55:41 14 relationship that would prevent you from following my
09:55:43 15 instructions on the law?

09:55:45 16 PROSPECTIVE JUROR: No, sir.

09:55:45 17 THE COURT: Is there anything in that
09:55:47 18 relationship that would prevent you from listening to
09:55:48 19 the evidence in this case fairly and impartially?

09:55:50 20 PROSPECTIVE JUROR: No, sir.

09:55:52 21 THE COURT: All right. Thank you.

09:55:53 22 We have another card raised?

09:55:55 23 Juror 80.

09:55:57 24 THE CLERK: Please stand.

09:56:00 25 PROSPECTIVE JUROR: Witness number 2 was my

09:56:05 1 Battalion commander, Lobbenmeier.

09:56:09 2 THE COURT: Do you know the name of the person?

09:56:11 3 PROSPECTIVE JUROR: Lobbenmeier.

09:56:12 4 THE COURT: Is there anything in that
09:56:13 5 relationship that would prevent you from following my
09:56:15 6 instructions on the law?

09:56:16 7 PROSPECTIVE JUROR: No.

09:56:16 8 THE COURT: Is there anything in that
09:56:18 9 relationship that would prevent you from listening to
09:56:19 10 the evidence in this case fairly and impartially?

09:56:21 11 PROSPECTIVE JUROR: No, sir.

09:56:21 12 THE COURT: Is the relationship that you have
09:56:24 13 one that is ongoing?

09:56:25 14 PROSPECTIVE JUROR: No, sir.

09:56:26 15 THE COURT: All right. When was the last time
09:56:27 16 you had a relationship with the witness?

09:56:29 17 PROSPECTIVE JUROR: About four to five years
09:56:31 18 ago.

09:56:31 19 THE COURT: All right. Thank you.

09:56:35 20 Anyone else from the jury box?

09:56:38 21 Number 38. Tell us your relation.

09:56:40 22 PROSPECTIVE JUROR: Well, I don't have a direct
09:56:42 23 relationship, but I'm in the Virgin Islands National
09:56:44 24 Guard as well.

09:56:48 25 THE COURT: So you have no relation, personal

09:56:52 1 or specific with any of the witnesses?

09:56:54 2 PROSPECTIVE JUROR: (Indicating) No.

09:56:56 3 THE COURT: Is there anything in your
09:56:57 4 association with the National Guard that would prevent
09:56:59 5 you from following my instructions on the law?

09:57:00 6 PROSPECTIVE JUROR: No.

09:57:01 7 THE COURT: Is there anything in your
09:57:03 8 relationship with the National Guard that would prevent
09:57:05 9 you from listening to the evidence in this case fairly
09:57:06 10 and impartially?

09:57:08 11 PROSPECTIVE JUROR: No.

09:57:08 12 THE COURT: All right. Thank you.

09:57:09 13 Anyone else in the jury box?

09:57:11 14 Juror Number 83.

09:57:14 15 PROSPECTIVE JUROR: Good morning.

09:57:15 16 THE COURT: Good morning.

09:57:16 17 PROSPECTIVE JUROR: I was married to General
09:57:19 18 Rivera's wife's nephew. And I used to work for Elton
09:57:26 19 Lewis.

09:57:30 20 THE COURT: We'll start with General Rivera.
09:57:37 21 The relationship that you have with General Rivera's
09:57:41 22 other relations, is that an ongoing relationship or a
09:57:46 23 past relationship?

09:57:46 24 PROSPECTIVE JUROR: Past relationship.

09:57:47 25 THE COURT: Okay. And when did that end? That

09:57:52 1 is, when was the last time you had any association with
09:57:54 2 General Rivera?

09:57:56 3 PROSPECTIVE JUROR: I see him on a daily basis
09:57:58 4 sometimes, weekly basis.

09:58:01 5 THE COURT: All right. Is there anything in
09:58:03 6 that relationship or past relationship that would
09:58:06 7 prevent you from following my instructions on the law?

09:58:08 8 PROSPECTIVE JUROR: No.

09:58:08 9 THE COURT: Is there anything in that
09:58:09 10 relationship that would prevent you from listening to
09:58:11 11 the evidence in this case fairly and impartially?

09:58:13 12 PROSPECTIVE JUROR: No.

09:58:13 13 THE COURT: Okay. And what's your relation
09:58:16 14 with Elton Lewis?

09:58:18 15 PROSPECTIVE JUROR: Elton Lewis used to be the
09:58:19 16 commissioner for the Police Department.

09:58:22 17 THE COURT: Okay. And what is your
09:58:23 18 relationship with Mr. Lewis?

09:58:25 19 PROSPECTIVE JUROR: I used to work -- well, at
09:58:27 20 the time when he was the commissioner I used to work in
09:58:31 21 Internal Affairs.

09:58:31 22 THE COURT: Okay. Do you maintain a
09:58:33 23 relationship with Mr. Lewis?

09:58:36 24 PROSPECTIVE JUROR: I see him from time to time
09:58:38 25 as well.

09:58:40 1 THE COURT: Do you have a social relationship
09:58:41 2 with Mr. Lewis?

09:58:43 3 PROSPECTIVE JUROR: Only when I see him.

09:58:46 4 THE COURT: All right. Is there anything in
09:58:48 5 that relationship that would prevent you from following
09:58:50 6 my instructions on the law?

09:58:51 7 PROSPECTIVE JUROR: No, sir.

09:58:51 8 THE COURT: Is there anything in that
09:58:52 9 relationship that would prevent you from listening to
09:58:54 10 the evidence in this case fairly and impartially?

09:58:57 11 PROSPECTIVE JUROR: No, sir.

09:58:57 12 THE COURT: Okay. Thank you.

09:58:58 13 Juror Number 58.

09:59:04 14 PROSPECTIVE JUROR: Good morning.

09:59:05 15 THE COURT: Good morning.

09:59:06 16 PROSPECTIVE JUROR: The general and I are
09:59:07 17 relatives.

09:59:11 18 THE COURT: Okay. What is your relation with
09:59:14 19 General Rivera?

09:59:15 20 PROSPECTIVE JUROR: Distant family. Cousins.

09:59:17 21 THE COURT: Okay. Is there anything in that
09:59:19 22 relationship that would prevent you from following my
09:59:21 23 instructions on the law?

09:59:22 24 PROSPECTIVE JUROR: No, sir.

09:59:23 25 THE COURT: Is there anything in that

09:59:24 1 relationship that would prevent you from listening to
09:59:26 2 the evidence in this case fairly and impartially?

09:59:28 3 PROSPECTIVE JUROR: No, sir.

09:59:28 4 THE COURT: Okay. Thank you, sir.

09:59:30 5 PROSPECTIVE JUROR: As well as the rest of, you
09:59:32 6 know, personnel beginning with Lobbenmeier and the
09:59:37 7 others, very much familiar with them.

09:59:40 8 Colonel Lewis, as well, was my commissioner in
09:59:40 9 Public Safety.

09:59:43 10 As well as my company commander, battalion
09:59:47 11 commander, Kai Schjang. He was also my company
09:59:53 12 commander, as well as battalion commander.

09:59:56 13 And Major Marise James, she was my -- she was the
10:00:06 14 brigadier general in the Guard as well.

10:00:10 15 THE COURT: Okay.

10:00:11 16 PROSPECTIVE JUROR: So I'm very much familiar
10:00:15 17 with the personnel. Lobbenmeier, we talk every now and
10:00:18 18 again -- not Lobbenmeier -- Colonel -- what's your name
10:00:23 19 again? Deborah.

10:00:25 20 THE COURT: Okay. Do you currently maintain a
10:00:27 21 relationship with any of those individuals?

10:00:29 22 PROSPECTIVE JUROR: I see the general very
10:00:31 23 often on -- well, on the road. Colonel Schjang, we do,
10:00:38 24 see him every now and again. That's about it. And
10:00:42 25 Marise James.

10:00:45 1 THE COURT: All right. Other than the
10:00:48 2 occasional meetings that you might have with them, is
10:00:50 3 there any other relationship beyond that?

10:00:52 4 PROSPECTIVE JUROR: No, sir.

10:00:53 5 THE COURT: Is there anything in those several
10:00:56 6 relationships that would prevent you from following my
10:00:58 7 instructions on the law?

10:00:59 8 PROSPECTIVE JUROR: No, sir.

10:01:02 9 THE COURT: Is there anything in those several
10:01:04 10 relations that would prevent you from listening to the
10:01:06 11 evidence in this case fairly and impartially?

10:01:08 12 PROSPECTIVE JUROR: No, sir.

10:01:08 13 THE COURT: Okay. Thank you, sir.

10:01:09 14 Juror Number 16.

10:01:11 15 PROSPECTIVE JUROR: Good morning, Your Honor.

10:01:11 16 THE COURT: Good morning.

10:01:12 17 PROSPECTIVE JUROR: General Lewis was my boss
10:01:15 18 at one point when I was manager for a particular
10:01:20 19 condominium association. He was a board member. And
10:01:24 20 I've known -- I know him from interactions in the
10:01:28 21 community.

10:01:28 22 General Rivera, I'm familiar with.

10:01:30 23 And Ms. James, I'm also familiar with from the
10:01:36 24 community.

10:01:36 25 THE COURT: All right. Is there anything in

10:01:37 1 those several relationships that would prevent you from
10:01:43 2 following my instructions on the law?

10:01:46 3 PROSPECTIVE JUROR: No, sir.

10:01:46 4 THE COURT: Is there anything in those several
10:01:48 5 relationships that would prevent you from listening to
10:01:50 6 the evidence in this case fairly and impartially?

10:01:52 7 PROSPECTIVE JUROR: No, sir.

10:01:53 8 THE COURT: Juror Number 25.

10:01:55 9 PROSPECTIVE JUROR: Good morning.

10:01:56 10 THE COURT: Good morning.

10:01:58 11 PROSPECTIVE JUROR: Related to Kai Schjang.

10:02:00 12 THE COURT: And what's your relationship?

10:02:02 13 PROSPECTIVE JUROR: Cousin?

10:02:05 14 THE COURT: And is that a relationship where
10:02:08 15 you have frequent social interaction?

10:02:10 16 PROSPECTIVE JUROR: No.

10:02:12 17 THE COURT: Okay. Is there anything in that
10:02:14 18 relationship that would prevent you from following my
10:02:16 19 instructions on the law?

10:02:17 20 PROSPECTIVE JUROR: No, sir.

10:02:18 21 THE COURT: Is there anything in that
10:02:19 22 relationship that would prevent you from listening to
10:02:21 23 the evidence in this case fairly and impartially?

10:02:24 24 PROSPECTIVE JUROR: No, sir.

10:02:25 25 THE COURT: All right. Thank you.

10:02:29 1 All right. The witnesses can leave the well of the
10:02:33 2 courtroom.

10:02:56 3 (Sidebar discussion held as follows:)

10:02:56 4 THE COURT: Does the defense have witnesses?

10:02:59 5 MR. JUPITER: Yes, Your Honor.

10:03:00 6 THE COURT: Do you have a list?

10:03:02 7 MR. JUPITER: Yes, Your Honor.

10:03:02 8 THE COURT: Okay. Does Mrs. Brann have the
10:03:06 9 list?

10:03:07 10 MR. JUPITER: Did my paralegal give you our
10:03:10 11 witness list?

10:03:12 12 THE CLERK: No.

10:03:13 13 MR. JUPITER: I'm sorry.

10:03:14 14 THE COURT: Normally I don't highlight that the
10:03:16 15 defense has witnesses, because you don't have to present
10:03:19 16 any. So I generally call them up here. So I'll need a
10:03:24 17 list of them. So if you give me the list now.

10:03:27 18 MR. JUPITER: Yes, Your Honor.

10:04:35 19 (Pause)

10:04:35 20 MR. JUPITER: I apologize, Your Honor. We do
10:04:37 21 not have the witness list.

10:04:38 22 THE COURT: Give me the names, then. Those are
10:04:41 23 them?

10:04:43 24 MR. JUPITER: Yes. But I'll ask them to
10:04:45 25 introduce themselves, if you want them to introduce

10:04:47 1 themselves.

10:04:48 2 THE COURT: They're here?

10:04:49 3 MR. JUPITER: Yes. They are ready to come into
10:04:51 4 the courtroom.

10:04:51 5 THE COURT: Have your paralegal bring them in,
10:04:53 6 then.

10:04:53 7 MR. JUPITER: Yes, Your Honor.

10:04:55 8 (End sidebar discussion, open court as follows:)

10:05:40 9 THE COURT SECURITY OFFICER: Judge, one of the
10:05:43 10 jurors is out to the bathroom.

10:06:04 11 THE COURT: All right.

10:06:04 12 There are a few more witnesses. Let me ask the
10:06:06 13 witnesses, starting with the witness closest to me, you
10:06:09 14 can introduce yourself to the jury and then we'll go
10:06:13 15 around that way.

10:06:14 16 THE WITNESS: My name is Captain Wanda
10:06:17 17 Williams.

10:06:17 18 THE WITNESS: Morning. I'm Mona Barnes.

10:06:20 19 THE WITNESS: Good morning. Lieutenant
10:06:20 20 Castillo.

10:06:25 21 THE WITNESS: Good morning --

10:06:25 22 THE COURT: You need to go a little bit slower.

10:06:34 23 THE WITNESS: Zera Louis. Z-e-r-a L-o-u-i-s.

10:06:34 24 THE WITNESS: Good morning. Janice Aelleyne.

10:06:36 25 THE WITNESS: Good morning. I'm Lieutenant

10:06:39 1 Colonel Kenneth Aelleyne.

10:06:42 2 THE COURT: All right. Does anyone have a
10:06:44 3 relationship by blood, marriage or business with any of
10:06:46 4 the witnesses to whom you've just been introduced?

10:06:50 5 THE COURT: Juror Number 80.

10:06:55 6 PROSPECTIVE JUROR: I know Mona Barnes, because
10:06:56 7 that was the state command major, and we meet in the
10:07:00 8 community from time to time.

10:07:00 9 And Lieutenant Castillo, she's in my unit and I go
10:07:05 10 to her for school business.

10:07:08 11 THE COURT: Okay. You currently have
10:07:10 12 relationships with those witnesses?

10:07:13 13 PROSPECTIVE JUROR: From time to time if I see
10:07:14 14 them in the community.

10:07:15 15 THE COURT: Okay. Is there anything in your
10:07:16 16 relationship with those several witnesses that would
10:07:18 17 prevent you from following my instructions on the law?

10:07:20 18 PROSPECTIVE JUROR: No, sir.

10:07:21 19 THE COURT: Is there anything in your
10:07:23 20 relationship with those several witnesses that would
10:07:26 21 prevent you from listening to the evidence in this case
10:07:27 22 fairly and impartially?

10:07:28 23 PROSPECTIVE JUROR: No, sir.

10:07:29 24 THE COURT: All right. Thank you.

10:07:32 25 Juror 29.

10:07:36 1 PROSPECTIVE JUROR: Good morning.

10:07:37 2 THE COURT: Good morning.

10:07:37 3 PROSPECTIVE JUROR: I am familiar with
10:07:40 4 Ms. Williams. My daughters and her daughters dance
10:07:45 5 together in the same school, and we frequently have our
10:07:48 6 kids back and forth.

10:07:50 7 THE COURT: Is there anything in that
10:07:51 8 relationship that would prevent you from following my
10:07:54 9 instructions on the law?

10:07:55 10 PROSPECTIVE JUROR: No, sir.

10:07:55 11 THE COURT: Is there anything in that
10:07:57 12 relationship that would prevent you from listening to
10:07:58 13 the evidence in this case fairly and impartially?

10:08:00 14 PROSPECTIVE JUROR: No, sir.

10:08:01 15 THE COURT: Thank you.

10:08:03 16 Juror Number 4.

10:08:06 17 PROSPECTIVE JUROR: The Aelleynes are good
10:08:09 18 customers of mine. Business.

10:08:11 19 THE COURT: Is there anything in that
10:08:13 20 relationship that would prevent you from following my
10:08:15 21 instructions on the law?

10:08:16 22 PROSPECTIVE JUROR: No, sir.

10:08:17 23 THE COURT: Is there anything in that
10:08:18 24 relationship that would prevent you from listening to
10:08:20 25 the evidence in this case fairly and impartially?

10:08:21 1 PROSPECTIVE JUROR: No, sir.

10:08:22 2 THE COURT: All right. Thank you.

10:08:25 3 Juror Number 26.

10:08:26 4 PROSPECTIVE JUROR: Your Honor, Mona Barnes and
10:08:29 5 Mr. Aelleyne are personal friends of mine.

10:08:31 6 THE COURT: Okay. Is your relationship one
10:08:35 7 where it is frequent social interaction?

10:08:37 8 PROSPECTIVE JUROR: No, no.

10:08:38 9 THE COURT: Is there anything in the
10:08:41 10 relationship that you have with those several witnesses
10:08:44 11 that would prevent you from listening to the evidence in
10:08:46 12 this case fairly and impartially?

10:08:47 13 PROSPECTIVE JUROR: No, sir.

10:08:48 14 THE COURT: Is there anything in those
10:08:49 15 relationship that would prevent you from following my
10:08:51 16 instructions on the law?

10:08:52 17 PROSPECTIVE JUROR: No, sir.

10:08:54 18 THE COURT: Thank you.

10:08:55 19 Juror Number 83.

10:08:59 20 PROSPECTIVE JUROR: Your Honor, I went to
10:09:01 21 school with Ms. Williams' husband.

10:09:04 22 I have attended Ms. Barnes' church several times.

10:09:09 23 And Mr. Aelleyne, I met him several times.

10:09:13 24 THE COURT: Is there anything in those several
10:09:15 25 relationships that would prevent you from following my

10:09:18 1 instructions on the law?

10:09:19 2 PROSPECTIVE JUROR: No.

10:09:19 3 THE COURT: Is there anything in those several
10:09:22 4 relationships that would prevent you from listening to
10:09:24 5 the evidence in this case fairly and impartially?

10:09:26 6 PROSPECTIVE JUROR: No.

10:09:27 7 THE COURT: Thank you.

10:09:28 8 Juror Number 3.

10:09:31 9 PROSPECTIVE JUROR: Your Honor, I'm a colleague
10:09:38 10 with Ms. Barnes.

10:09:41 11 THE COURT: I'm sorry, I missed the first.
10:09:43 12 You're what? A colleague.

10:09:44 13 PROSPECTIVE JUROR: We're ministers together.

10:09:46 14 THE COURT: Is that relationship current?

10:09:48 15 PROSPECTIVE JUROR: Yes. I haven't seen her
10:09:50 16 recently, but --

10:09:51 17 THE COURT: I'm sorry, I missed you, ma'am.

10:09:53 18 PROSPECTIVE JUROR: I have not seen her or
10:09:54 19 interacted with her recently.

10:09:56 20 THE COURT: All right. Is there anything in
10:09:57 21 that relationship that would prevent you from
10:09:59 22 listening -- following my instructions on the law?

10:10:01 23 PROSPECTIVE JUROR: No, sir.

10:10:02 24 THE COURT: Is there anything in that
10:10:03 25 relationship that would prevent you from listening to

10:10:06 1 the evidence in this case fairly and impartially?

10:10:08 2 PROSPECTIVE JUROR: No, Your Honor.

10:10:09 3 THE COURT: All right. Thank you.

10:10:13 4 Juror 58.

10:10:15 5 PROSPECTIVE JUROR: Sergeant Mona Barnes, she
10:10:22 6 was my sergeant major in the Guard as well, and I'm
10:10:27 7 familiar with the other personnel as well.

10:10:29 8 THE COURT: Is there anything in those several
10:10:31 9 relationships that would prevent you from following my
10:10:33 10 instructions on the law?

10:10:34 11 PROSPECTIVE JUROR: No, sir.

10:10:34 12 THE COURT: Is there anything in those several
10:10:38 13 relationships that would prevent you from listening to
10:10:39 14 in evidence this case --

10:10:40 15 PROSPECTIVE JUROR: No, sir.

10:10:40 16 THE COURT: -- fairly and impartially?

10:10:41 17 PROSPECTIVE JUROR: No, sir.

10:10:42 18 THE COURT: Okay. Thank you.

10:10:43 19 Juror 82.

10:10:45 20 PROSPECTIVE JUROR: I know Ms. Mona Barnes from
10:10:49 21 teaching at her after-school program, Holy Ghost
10:10:56 22 Deliverance Ministries, about five years ago. I
10:10:59 23 worked --

10:10:59 24 THE COURT: You said about five years ago?

10:11:01 25 PROSPECTIVE JUROR: About that long ago. I

10:11:03 1 worked as a reading instructor in the after-school
10:11:07 2 program.

10:11:07 3 THE COURT: Is there anything in that
10:11:10 4 relationship that would prevent you from following my
10:11:12 5 instructions on the law?

10:11:13 6 PROSPECTIVE JUROR: No, sir.

10:11:13 7 THE COURT: Is there anything in that
10:11:14 8 relationship that would prevent you from listening to
10:11:18 9 the evidence in this case fairly and impartially?

10:11:20 10 PROSPECTIVE JUROR: No, sir.

10:11:24 11 THE COURT: Thank you.

10:11:26 12 Okay. The witnesses may leave the well.

10:11:28 13 Thank you.

10:11:48 14 The indictment in this case alleges that the
10:11:50 15 defendant, Sherrymae Morales, was involved in theft of
10:11:56 16 federal program funds between March 2010 through
10:12:04 17 July 2011, and in some occasions used wire fraud to
10:12:08 18 achieve that objective, that is, to steal or defraud the
10:12:16 19 government of federal program funds.

10:12:18 20 Has anyone heard or read anything about this case?

10:12:30 21 Keep your cards up.

10:12:43 22 When I call your number, you can put your card
10:12:46 23 down. 26, 4, 83, 58, 3, 6, 27, 16, 9, 60, 12.

10:13:15 24 All right. For the next question I'll take your
10:13:17 25 answers -- again, I'm only looking at this group, not

10:13:23 1 anyone in this group.

10:13:24 2 Has anyone -- have you, a relative or a very close
10:13:31 3 friend been involved in the criminal justice system,
10:13:34 4 either as a defendant, a witness, or a victim?

10:13:38 5 If so, raise your card.

10:13:43 6 26, 41, 83, 16, 76.

10:13:56 7 Okay. You can put your card down.

10:13:59 8 All right. Let me see counsel at sidebar.

10:14:29 9 (Sidebar discussion held as follows:)

10:14:30 10 THE COURT: Juror 26?

10:15:07 11 Good morning. Tell us your Juror Number, please.

10:15:10 12 PROSPECTIVE JUROR: 26.

10:15:11 13 THE COURT: You said that you had read or heard
10:15:12 14 something about this case?

10:15:13 15 PROSPECTIVE JUROR: Yes.

10:15:13 16 THE COURT: Where is it -- what is it?

10:15:15 17 PROSPECTIVE JUROR: In the newspaper.

10:15:16 18 THE COURT: Is there anything that you read or
10:15:17 19 heard that would prevent you from listening to the
10:15:19 20 evidence in this case fairly and impartially?

10:15:21 21 PROSPECTIVE JUROR: No.

10:15:21 22 THE COURT: Is there anything that you read or
10:15:23 23 heard that would prevent you from following my
10:15:24 24 instructions on the law?

10:15:25 25 PROSPECTIVE JUROR: No.

10:15:25 1 THE COURT: You also raised your card in
10:15:27 2 response to the question about the criminal justice
10:15:30 3 system. Tell us why.

10:15:32 4 PROSPECTIVE JUROR: Well, you asked about, if I
10:15:34 5 have a relative who was a victim.

10:15:36 6 THE COURT: Right.

10:15:37 7 PROSPECTIVE JUROR: I have a relative who was
10:15:40 8 murdered in 1969.

10:15:41 9 THE COURT: Is there anything about that
10:15:43 10 experience that would prevent you from following my
10:15:44 11 instructions on the law?

10:15:45 12 PROSPECTIVE JUROR: No.

10:15:46 13 THE COURT: Is there anything in that
10:15:47 14 experience that would prevent you from listening to the
10:15:48 15 evidence in this case fairly and impartially?

10:15:49 16 PROSPECTIVE JUROR: No.

10:15:51 17 THE COURT: Okay. Thank you.

10:15:53 18 Juror 83.

10:16:19 19 Good morning.

10:16:20 20 PROSPECTIVE JUROR: Good morning.

10:16:20 21 THE COURT: Tell us your Juror Number, please.

10:16:22 22 PROSPECTIVE JUROR: Number 83.

10:16:23 23 THE COURT: Okay. You indicated that you had
10:16:24 24 read or heard something about this case?

10:16:26 25 PROSPECTIVE JUROR: Yes. I heard it on the

10:16:27 1 news.

10:16:28 2 THE COURT: Okay. Is there anything that you
10:16:30 3 read or heard that would prevent you from listening to
10:16:32 4 the evidence in this case fairly and impartially?

10:16:34 5 PROSPECTIVE JUROR: No, sir.

10:16:34 6 THE COURT: Is there anything that you read or
10:16:35 7 heard that would prevent you from following my
10:16:37 8 instructions on the law?

10:16:38 9 PROSPECTIVE JUROR: No, sir.

10:16:38 10 THE COURT: You also raised your card in
10:16:40 11 response to the question about the criminal justice
10:16:42 12 system. Tell us why.

10:16:44 13 PROSPECTIVE JUROR: Because I work for Internal
10:16:46 14 Affairs for the Police Department presently, and in the
10:16:49 15 past, I served as a witness for a case in District Court
10:16:54 16 in 2010, I believe it was, against Franklin Xavier. I
10:17:02 17 was a witness in that case.

10:17:04 18 I was also a witness for the Ronald Pickard case.

10:17:08 19 THE COURT: Okay. You were a government
10:17:10 20 witness in those cases?

10:17:12 21 PROSPECTIVE JUROR: Yes, I was.

10:17:13 22 THE COURT: Okay. Are you an officer?

10:17:15 23 PROSPECTIVE JUROR: I'm an Internal Affairs
10:17:20 24 agent.

10:17:20 25 THE COURT: Are you a peace officer?

10:17:22 1 PROSPECTIVE JUROR: Yes, I do.

10:17:22 2 THE COURT: You currently are?

10:17:24 3 PROSPECTIVE JUROR: Yes.

10:17:28 4 THE COURT: All right. Is there anything in
10:17:31 5 those several experiences that would prevent you from
10:17:34 6 following my instructions on the law?

10:17:35 7 PROSPECTIVE JUROR: No, sir.

10:17:35 8 THE COURT: Is there anything in those several
10:17:39 9 experiences that would prevent you from listening to the
10:17:41 10 evidence in this case fairly and impartially?

10:17:42 11 PROSPECTIVE JUROR: No, sir.

10:17:43 12 THE COURT: All right. Thank you.

10:17:46 13 Juror Number 3.

10:18:17 14 Good morning.

10:18:18 15 PROSPECTIVE JUROR: Good morning.

10:18:18 16 THE COURT: Tell us your Juror Number, please.

10:18:20 17 PROSPECTIVE JUROR: What number is it? 3.

10:18:23 18 THE COURT: You indicated that you had read or
10:18:25 19 heard something about this case?

10:18:26 20 PROSPECTIVE JUROR: Yes.

10:18:27 21 THE COURT: Tell us about that.

10:18:29 22 PROSPECTIVE JUROR: I read in the -- I think
10:18:32 23 either in the Daily News or the Avis about the case,
10:18:36 24 that the defendant had stolen moneys, I think from the
10:18:41 25 National Guard.

10:18:42 1 THE COURT: Is there anything that you read or
10:18:43 2 heard that would prevent you from listening to the
10:18:46 3 evidence in this case fairly and impartially?

10:18:49 4 PROSPECTIVE JUROR: I think I was -- I am
10:18:52 5 biased.

10:18:53 6 THE COURT: What do you mean -- what does that
10:18:54 7 mean?

10:18:55 8 PROSPECTIVE JUROR: I think I assumed what I
10:18:58 9 read in the paper was right.

10:19:00 10 THE COURT: Okay. And what is it that you read
10:19:02 11 in the paper?

10:19:03 12 PROSPECTIVE JUROR: That the defendant had
10:19:04 13 stolen moneys from the National Guard. I don't know the
10:19:12 14 specific details.

10:19:12 15 THE COURT: Okay. Did you -- was it an
10:19:15 16 announcement that the government had charged the
10:19:18 17 defendant, that you had read about?

10:19:24 18 PROSPECTIVE JUROR: It might have been. I
10:19:26 19 don't remember the details.

10:19:28 20 THE COURT: Okay. And what is it about the
10:19:34 21 case that you do recall, if anything?

10:19:39 22 PROSPECTIVE JUROR: The presentation that an
10:19:43 23 investigation had taken place.

10:19:45 24 THE COURT: Okay.

10:19:47 25 PROSPECTIVE JUROR: And --

10:19:48 1 THE COURT: Go ahead.

10:19:49 2 PROSPECTIVE JUROR: And that she was -- to my,
10:19:52 3 if I recollect correctly, that she was being charged
10:19:57 4 with having stolen the moneys.

10:19:59 5 THE COURT: And you said you had believed the
10:20:00 6 article. What, the part that she had been charged? You
10:20:05 7 believe that she was charged.

10:20:07 8 PROSPECTIVE JUROR: I guess I just assumed that
10:20:08 9 the presentation was correct.

10:20:09 10 THE COURT: Okay. And as a juror your duty is
10:20:12 11 to listen to the evidence fairly and impartially.

10:20:15 12 Is there anything that you read that would prevent
10:20:17 13 you from doing that?

10:20:21 14 PROSPECTIVE JUROR: No.

10:20:26 15 THE COURT: Okay. Is there anything that you
10:20:28 16 read that would prevent you from following my
10:20:31 17 instructions on the law?

10:20:32 18 PROSPECTIVE JUROR: No.

10:20:32 19 THE COURT: Okay. Thank you, ma'am.

10:20:36 20 MR. JUPITER: May I inquire, Your Honor?

10:20:38 21 THE COURT: Not yet.

10:20:38 22 Okay. Thank you, ma'am.

10:20:40 23 PROSPECTIVE JUROR: Okay.

10:20:41 24 THE COURT: Juror 58.

10:20:50 25 58?

10:20:51 1 THE CLERK: Juror Number 58?

10:20:55 2 THE COURT: I'm going to strike Juror 3 for

10:20:57 3 cause.

10:20:57 4 Is there any objection from the defense?

10:20:59 5 MR. JUPITER: No, Your Honor.

10:21:00 6 THE COURT: Any from the government?

10:21:02 7 MR. POTTER: No, Judge.

10:21:03 8 THE COURT: Okay.

10:21:17 9 Good morning.

10:21:18 10 PROSPECTIVE JUROR: Good morning, sir.

10:21:19 11 THE COURT: Tell us your Juror Number, please.

10:21:21 12 PROSPECTIVE JUROR: My?

10:21:22 13 THE COURT: Your Juror Number.

10:21:24 14 PROSPECTIVE JUROR: 58.

10:21:24 15 THE COURT: You indicated you had read or heard

10:21:26 16 something about this case?

10:21:27 17 PROSPECTIVE JUROR: Yes. Actually, in the

10:21:30 18 papers I read about it and it was discussed up at the

10:21:36 19 Boy Scout camp with some friends of mine.

10:21:38 20 THE COURT: Okay. Is there anything that you

10:21:39 21 read or discussed that would prevent you from listening

10:21:44 22 to the evidence in this case fairly and impartially?

10:21:45 23 PROSPECTIVE JUROR: In this case, yes. Yes,

10:21:48 24 sir.

10:21:48 25 THE COURT: Okay. And why is that?

10:21:50 1 PROSPECTIVE JUROR: Because I can -- from a
10:21:54 2 police officer standpoint, being a retired police
10:21:57 3 officer, when I read what I read in the article, and the
10:22:03 4 discussion we had, I said to myself, how can she do a
10:22:07 5 thing like that. In this case, you know, the money, the
10:22:10 6 wire fraud. So...

10:22:14 7 And I think it would hamper.

10:22:17 8 THE COURT: All right. Thank you, sir.

10:22:19 9 PROSPECTIVE JUROR: Okay.

10:22:20 10 THE COURT: Juror 27? 27.

10:22:31 11 Any objection from the defense to the Court
10:22:33 12 striking 58 for cause?

10:22:36 13 MR. JUPITER: No objection.

10:22:37 14 THE COURT: Attorney Potter?

10:22:38 15 MR. POTTER: No objection, Judge.

10:22:40 16 THE COURT: All right.

10:22:56 17 Good morning.

10:22:56 18 PROSPECTIVE JUROR: Good morning.

10:22:57 19 THE COURT: What's your Juror Number, please?

10:22:58 20 PROSPECTIVE JUROR: 27.

10:22:59 21 THE COURT: Okay. You indicated that you had
10:23:01 22 read something about this case or heard something about
10:23:04 23 it.

10:23:04 24 PROSPECTIVE JUROR: I -- it was on the news,
10:23:06 25 and I really discussed it with my daughters. We

10:23:10 1 discussed it. We just spoke about how, you know, people
10:23:13 2 think that they can do things and they get away with it.
10:23:16 3 I don't feel I would be comfortable judging -- because
10:23:21 4 I've already placed a judgment on her.

10:23:24 5 THE COURT: Okay.

10:23:25 6 PROSPECTIVE JUROR: Because we discussed it. I
10:23:27 7 discussed it with my daughters.

10:23:28 8 THE COURT: All right. Thank you, ma'am.

10:23:30 9 PROSPECTIVE JUROR: Thank you.

10:23:33 10 THE COURT: Juror Number 16?

10:23:37 11 Does defense object to the Court striking that
10:23:39 12 juror for cause?

10:23:40 13 MR. JUPITER: No, Your Honor.

10:23:41 14 THE COURT: Attorney Potter?

10:23:42 15 MR. POTTER: No, Judge.

10:23:43 16 THE COURT: Okay.

10:24:06 17 Good morning.

10:24:07 18 Tell us your Juror Number, please.

10:24:08 19 PROSPECTIVE JUROR: 16.

10:24:09 20 THE COURT: Okay. You indicated that you had
10:24:11 21 read or heard something about this case?

10:24:12 22 PROSPECTIVE JUROR: Yes, sir.

10:24:13 23 THE COURT: Okay. What's that?

10:24:14 24 PROSPECTIVE JUROR: I read in the newspaper the
10:24:16 25 circumstances around it. I heard it on the news.

10:24:20 1 THE COURT: Okay. Is there anything that you
10:24:21 2 read or heard that would prevent you from listening to
10:24:23 3 the evidence in this case fairly and impartially?

10:24:25 4 PROSPECTIVE JUROR: Absolutely not.

10:24:26 5 THE COURT: Is there anything that you read or
10:24:28 6 heard that would prevent you from following my
10:24:30 7 instructions on the law?

10:24:31 8 PROSPECTIVE JUROR: No, sir.

10:24:32 9 THE COURT: Okay. You also responded to the
10:24:34 10 question about the criminal justice system. Tell us
10:24:37 11 why.

10:24:37 12 PROSPECTIVE JUROR: I had a nephew who was
10:24:40 13 involved in, I believe it was, if I'm correct, two
10:24:49 14 Christmases ago, he was stopped in a police stop and
10:24:52 15 there was gentlemen -- young men in the vehicle that was
10:24:55 16 involved in some kind of activity, and he got caught up
10:24:58 17 into that.

10:24:58 18 THE COURT: Okay. When you say he got caught
10:25:00 19 up, what does that mean?

10:25:01 20 PROSPECTIVE JUROR: He was in the car. He was
10:25:02 21 the oldest one and the others were under age. So I
10:25:06 22 guess he was the one that was charged.

10:25:11 23 THE COURT: Okay. Is that a case that remains
10:25:13 24 pending?

10:25:14 25 PROSPECTIVE JUROR: No, sir.

10:25:14 1 THE COURT: Okay. What was the result of that?

10:25:16 2 PROSPECTIVE JUROR: The case was dismissed.

10:25:17 3 THE COURT: Okay. What was he charged with?

10:25:20 4 PROSPECTIVE JUROR: My gosh. It's not coming

10:25:24 5 to me.

10:25:24 6 THE COURT: Do you recall what it had to deal

10:25:26 7 with?

10:25:26 8 PROSPECTIVE JUROR: I beg your pardon?

10:25:28 9 THE COURT: What did it have to do with?

10:25:31 10 PROSPECTIVE JUROR: I think the young men were

10:25:33 11 under age and they were driving without proper vehicle

10:25:36 12 identifications or registration, or something of that

10:25:40 13 nature.

10:25:40 14 THE COURT: Okay. All right. Is there

10:25:43 15 anything in that experience that would prevent you from

10:25:46 16 following my instructions on the law?

10:25:47 17 PROSPECTIVE JUROR: No, sir.

10:25:48 18 THE COURT: Is there anything in that

10:25:49 19 experience that would prevent you from listening to the

10:25:51 20 evidence in this case fairly and impartially?

10:25:52 21 PROSPECTIVE JUROR: No, sir.

10:25:53 22 THE COURT: Okay. Thank you, sir.

10:25:54 23 Juror Number 6.

10:26:00 24 MR. JUPITER: Your Honor?

10:26:01 25 THE COURT: Yes.

10:26:02 1 MR. JUPITER: The first response he gave
10:26:05 2 apparently was "absolutely not."

10:26:07 3 I heard "absolutely," but I assume from his
10:26:09 4 subsequent answers that it must have been "absolutely
10:26:12 5 not."

10:26:12 6 Is that the Court's --

10:26:14 7 THE COURT: I heard "absolutely not."

10:26:17 8 MR. POTTER: I heard "absolutely not," Judge.

10:26:19 9 THE COURT: Chandra?

10:26:21 10 Okay.

10:26:22 11 Good morning. Tell us your Juror Number, please?

10:26:24 12 PROSPECTIVE JUROR: Six.

10:26:25 13 THE COURT: Okay. You indicated that you had
10:26:26 14 read or heard something about this case. Tell us about
10:26:28 15 that.

10:26:29 16 PROSPECTIVE JUROR: When it first came out in
10:26:30 17 the newspapers.

10:26:31 18 THE COURT: Okay. Is there anything that you
10:26:33 19 read or heard that would prevent you from following my
10:26:35 20 instructions on the law?

10:26:36 21 PROSPECTIVE JUROR: No.

10:26:37 22 THE COURT: Is there anything you read or heard
10:26:40 23 that would prevent you from listening to the evidence in
10:26:42 24 this case fairly and impartially?

10:26:44 25 PROSPECTIVE JUROR: No.

10:26:44 1 THE COURT: Okay. Thank you.

10:26:45 2 Juror Number 9.

10:27:12 3 Good morning. Tell us your Juror Number, please.

10:27:13 4 PROSPECTIVE JUROR: Nine.

10:27:14 5 THE COURT: You indicated that you had read or
10:27:16 6 heard something about this case?

10:27:17 7 PROSPECTIVE JUROR: Initially when it came out
10:27:19 8 in the newspaper, but I have not followed any details of
10:27:22 9 the case.

10:27:24 10 THE COURT: Okay. Is there anything that you
10:27:25 11 read or heard that would prevent you from following my
10:27:27 12 instructions on the law?

10:27:28 13 PROSPECTIVE JUROR: No, Your Honor.

10:27:29 14 THE COURT: Is there anything that you read or
10:27:30 15 heard that would prevent you from listening to the
10:27:31 16 evidence in this case fairly and impartially?

10:27:33 17 PROSPECTIVE JUROR: No, Your Honor.

10:27:33 18 THE COURT: Okay. Thank you.

10:27:34 19 PROSPECTIVE JUROR: Thank you.

10:27:35 20 THE COURT: Juror Number 60.

10:27:59 21 PROSPECTIVE JUROR: Good morning.

10:28:00 22 THE COURT: Good morning. Tell us your Juror
10:28:01 23 Number, please.

10:28:01 24 PROSPECTIVE JUROR: Number 60. 60.

10:28:03 25 THE COURT: Okay. You indicated that you had

10:28:05 1 read or heard something about this case?

10:28:07 2 PROSPECTIVE JUROR: Yes, sir. That's one of my
10:28:09 3 daily routines, is the newspapers. I read the
10:28:17 4 newspapers on a daily basis as part of my routine since
10:28:21 5 I retired.

10:28:22 6 THE COURT: Is there anything that you read or
10:28:23 7 heard that would prevent you from following my
10:28:25 8 instructions on the law?

10:28:26 9 PROSPECTIVE JUROR: No, sir.

10:28:27 10 THE COURT: Is there anything that you read or
10:28:28 11 heard that would prevent you from listening to the
10:28:29 12 evidence in this case fairly and impartially?

10:28:32 13 PROSPECTIVE JUROR: No, sir.

10:28:32 14 THE COURT: Okay. Thank you, sir.

10:28:34 15 PROSPECTIVE JUROR: If I might add, sir, I had
10:28:38 16 requested an excuse because right now I'm suffering from
10:28:41 17 the results of a chikungunya. And what happened is I
10:28:46 18 take medication, but this morning I hesitated to take
10:28:48 19 the pain killer because after a little while it makes me
10:28:53 20 drowsy. But right now I'm in pain.

10:28:56 21 THE COURT: Okay. Well, we'll try to make
10:28:59 22 sure, if you are selected, that you can, you can take
10:29:01 23 whatever medication that is necessary for your medical
10:29:05 24 health. Okay?

10:29:06 25 PROSPECTIVE JUROR: Okay. I didn't take it

10:29:08 1 because it makes me drowsy.

10:29:10 2 THE COURT: Okay. Thank you, sir.

10:29:12 3 Juror Number 12.

10:29:32 4 Then jury 41 can wait here, and then 76, also.

10:29:42 5 Good morning.

10:29:43 6 Tell us your Juror Number, please.

10:29:45 7 PROSPECTIVE JUROR: 12.

10:29:46 8 THE COURT: Okay. You indicated that you had
10:29:48 9 read or heard something about this case?

10:29:49 10 PROSPECTIVE JUROR: Yes.

10:29:50 11 THE COURT: Tell us about that.

10:29:52 12 PROSPECTIVE JUROR: I read in the newspaper
10:29:54 13 about the federal charges against the defendant; just
10:29:59 14 read in the newspaper and made note to that.

10:30:01 15 THE COURT: Okay. Is there anything that you
10:30:03 16 read or heard that would prevent you from following my
10:30:06 17 instructions on the law?

10:30:07 18 PROSPECTIVE JUROR: No.

10:30:07 19 THE COURT: Is there anything that you read or
10:30:09 20 heard that would prevent you from listening to the
10:30:10 21 evidence in this case fairly and impartially?

10:30:12 22 PROSPECTIVE JUROR: No.

10:30:13 23 THE COURT: Okay. Thank you, ma'am.

10:30:18 24 41?

10:30:24 25 And then 76.

10:30:30 1 Good morning. Tell us your Juror Number, please.

10:30:32 2 PROSPECTIVE JUROR: 41.

10:30:33 3 THE COURT: Okay. You indicated that -- you
10:30:36 4 responded yes to the question about the criminal justice
10:30:39 5 system. Tell us about that.

10:30:41 6 PROSPECTIVE JUROR: If I had been a victim of
10:30:43 7 any criminal offense? Yes.

10:30:45 8 I was molested from the ages of 11 to 14. And I've
10:30:50 9 had several family members be put behind bars. My
10:30:57 10 stepfather was also never prosecuted for what happened.

10:31:02 11 THE COURT: Is there anything in those several
10:31:04 12 experiences that would prevent you from following my
10:31:05 13 instructions on the law?

10:31:06 14 PROSPECTIVE JUROR: I would follow your
10:31:09 15 instructions. I'm not sure how my --

10:31:13 16 THE COURT: Well, the question isn't whether it
10:31:15 17 would be difficult. The question is just whether you
10:31:17 18 would follow my instructions.

10:31:18 19 PROSPECTIVE JUROR: I would.

10:31:19 20 THE COURT: Would you -- is there anything in
10:31:21 21 those experiences that would prevent you from listening
10:31:23 22 to the evidence in this case fairly and impartially?

10:31:25 23 PROSPECTIVE JUROR: No.

10:31:30 24 THE COURT: Okay. All right. Thank you.

10:31:37 25 76.

10:31:49 1 PROSPECTIVE JUROR: Good morning.

10:31:49 2 THE COURT: Good morning. Tell us your Juror
10:31:52 3 Number, please.

10:31:52 4 PROSPECTIVE JUROR: 76.

10:31:53 5 THE COURT: Okay. You responded yes to the
10:31:55 6 question about the criminal justice system. Tell us
10:31:58 7 why.

10:31:59 8 PROSPECTIVE JUROR: I had a case that just, I
10:32:03 9 think was last year -- two years ago, with Alaska versus
10:32:10 10 Virgin Islands -- I mean Virgin Islands versus Isaiah
10:32:19 11 Fox, Alaska money laundering.

10:32:21 12 THE COURT: Who was involved in that?

10:32:22 13 PROSPECTIVE JUROR: The attorney was --

10:32:24 14 THE COURT: I'm sorry. How were you involved
10:32:26 15 in that?

10:32:26 16 PROSPECTIVE JUROR: Oh. I was at service, I
10:32:30 17 was a defendant, and then the charge against me was
10:32:35 18 dropped.

10:32:36 19 THE COURT: Okay. Is there anything in that
10:32:39 20 experience that would prevent you from following my
10:32:41 21 instructions on the law?

10:32:42 22 PROSPECTIVE JUROR: It wasn't a good experience
10:32:47 23 so, yeah, I'll have a problem.

10:32:49 24 THE COURT: Okay. Would you have a problem
10:32:51 25 with following my instructions?

10:32:54 1 PROSPECTIVE JUROR: Well, basically being fair.

10:32:57 2 THE COURT: Okay. And why do you say that?

10:32:59 3 PROSPECTIVE JUROR: Because it wasn't a good

10:33:01 4 experience for me, so I really don't like District

10:33:04 5 Court.

10:33:04 6 THE COURT: Okay. All right. Thank you,

10:33:06 7 ma'am.

10:33:09 8 THE CLERK: Juror Number 4?

10:33:15 9 THE COURT: Four?

10:33:27 10 Okay. Any objections to the Court striking 76 for

10:33:32 11 cause?

10:33:32 12 MR. POTTER: No, Your Honor.

10:33:34 13 THE COURT: Attorney Potter?

10:33:35 14 MR. POTTER: No, Your Honor.

10:33:47 15 THE COURT: Good morning.

10:33:49 16 PROSPECTIVE JUROR: Good morning.

10:33:49 17 THE COURT: Tell us your Juror Number, please.

10:33:51 18 PROSPECTIVE JUROR: Pardon?

10:33:51 19 THE COURT: Your Juror Number.

10:33:52 20 PROSPECTIVE JUROR: Four.

10:33:53 21 THE COURT: You indicated you had read or heard

10:33:55 22 something about this case.

10:33:56 23 PROSPECTIVE JUROR: Yeah, been reading in the

10:33:58 24 newspaper.

10:33:58 25 THE COURT: Tell us about that. What did you

10:34:00 1 read?

10:34:00 2 PROSPECTIVE JUROR: Well, I read about the
10:34:02 3 fraud and the allegations in the newspaper and the
10:34:03 4 newspaper article.

10:34:05 5 THE COURT: Okay. Is there anything that you
10:34:06 6 read or heard that would prevent you from following my
10:34:08 7 instructions on the law?

10:34:09 8 PROSPECTIVE JUROR: Not really, no.

10:34:12 9 THE COURT: Okay. Is there --

10:34:13 10 PROSPECTIVE JUROR: Just personal opinion, you
10:34:16 11 know. I, I own a small business, so I don't take to
10:34:21 12 people taking things for free, granted, you know. But I
10:34:26 13 have pretty strong feelings about that.

10:34:28 14 THE COURT: Okay. You understand that the
10:34:32 15 defendant is not proven to be --

10:34:36 16 PROSPECTIVE JUROR: Right, I understand that.

10:34:37 17 THE COURT: Okay. And you understand that the
10:34:39 18 burden would be on the government to prove beyond a
10:34:41 19 reasonable doubt if there was any guilt?

10:34:42 20 PROSPECTIVE JUROR: Yeah. I've been a jury --
10:34:46 21 I've been a jurist before in this courtroom.

10:34:49 22 THE COURT: Okay. Is there anything that you
10:34:51 23 read or heard that would prevent you from following my
10:34:53 24 instructions on the law?

10:34:54 25 PROSPECTIVE JUROR: No.

10:34:55 1 THE COURT: Is there anything that you read or
10:34:56 2 heard that would prevent you from listening to the
10:34:59 3 evidence in this case fairly and impartially?

10:35:00 4 PROSPECTIVE JUROR: No.

10:35:01 5 THE COURT: Okay. You mentioned the word
10:35:03 6 "opinion." When you mention that word, what -- tell us
10:35:08 7 what you meant by that?

10:35:11 8 PROSPECTIVE JUROR: Word what?

10:35:12 9 THE COURT: When you were giving an answer, you
10:35:14 10 said --

10:35:15 11 PROSPECTIVE JUROR: Well, I have pretty strong
10:35:17 12 feelings. I mean I, I'm a strong business owner. Here,
10:35:21 13 that means murder. I've been in business since 26 years
10:35:26 14 ago. I'm barely surviving. I hate to see people
10:35:28 15 getting something for naught. So I really started to
10:35:31 16 get a very strong opinion on that over the last couple
10:35:35 17 years.

10:35:35 18 THE COURT: Okay.

10:35:36 19 PROSPECTIVE JUROR: So, you know --

10:35:39 20 THE COURT: Do you have an opinion with respect
10:35:41 21 to this --

10:35:42 22 PROSPECTIVE JUROR: I have not -- I don't know
10:35:43 23 enough about this case, so --

10:35:45 24 THE COURT: Okay.

10:35:45 25 PROSPECTIVE JUROR: I mean, I could parse the

10:35:47 1 evidence out after seeing it.

10:35:48 2 THE COURT: Okay.

10:35:50 3 All right. Thank you, sir.

10:35:51 4 PROSPECTIVE JUROR: Thank you.

10:35:55 5 THE COURT: Okay, Counsel, seven minutes.

10:35:59 6 MR. POTTER: Judge, I'm not sure that I heard

10:36:02 7 whether or not any one of the panel had a business or

10:36:07 8 personal relationship with the defendant. I think I

10:36:11 9 heard with respect to Attorney Jupiter, but not --

10:36:13 10 THE COURT: I don't understand. What's your
10:36:14 11 question?

10:36:16 12 MR. POTTER: Does anyone have a personal
10:36:18 13 relationship with the defendant?

10:36:21 14 THE COURT: I think that was one of the first
10:36:23 15 questions I asked. I'm pretty sure I asked --
10:36:25 16 introduced the defendant and said, "Did you have a" --
10:36:33 17 first I asked with the lawyers, and then I go to the
10:36:36 18 defendant.

10:36:37 19 MR. JUPITER: Yes, Your Honor. And I believe
10:36:38 20 you did do that, but I don't believe you did it with
10:36:40 21 respect to the United States Attorneys's Office. I
10:36:43 22 think you just said with Mr. Potter.

10:36:46 23 And I -- even though this case does not involve
10:36:50 24 police officers, Your Honor, I would even -- there was
10:36:53 25 still an investigation, an investigation that was

10:36:56 1 similar to law enforcement investigation, so I would ask
10:37:00 2 that the Court would ask that question, and ask whether
10:37:04 3 or not people are -- find credibility of a law
10:37:09 4 enforcement officer to be more credible than a lay
10:37:15 5 witness.

10:37:18 6 THE COURT: Okay. I think my questions have
10:37:19 7 covered some of that basis. With respect to the U.S.
10:37:22 8 Attorney's Office.

10:37:23 9 One of the jurors who was, I think it was Juror 76,
10:37:27 10 Attorney Potter wasn't involved in that, but she
10:37:29 11 certainly was aware that it was the US Attorney's Office
10:37:35 12 on the other side of her; as every juror has done who
10:37:39 13 has had a connection with the US Attorney's Office,
10:37:42 14 since I've been doing voir dire, they always seem to
10:37:44 15 respond to that question with their connection with the
10:37:46 16 US Attorney's Office.

10:37:48 17 Thank you.

10:37:49 18 MR. JUPITER: Your Honor, the other -- can I
10:37:51 19 inquire -- there was one juror, and I had a note saying
10:37:56 20 that she was Juror Number 41. But I don't see -- so
10:38:00 21 unless I wrote the name down wrong, I don't see a 41.

10:38:04 22 THE COURT: There was a 41 who responded about
10:38:06 23 the criminal justice system. What is your question?
10:38:23 24 Whether she had come up here?

10:38:25 25 I'll ask her to raise her card, and maybe that will

10:38:29 1 refresh your memory.

10:38:30 2 MR. JUPITER: I think I know which one she is.

10:38:32 3 I'm trying to see... I don't see it on my -- I guess I

10:38:36 4 don't see it on my paper.

10:38:38 5 What page is 41 on?

10:38:53 6 Okay. Thank you.

10:38:53 7 THE COURT: Okay. Seven minutes.

10:45:55 8 (Pause)

10:45:55 9 THE COURT: Counsel, come to sidebar.

10:45:59 10 (Sidebar discussion held as follows:)

10:46:12 11 THE COURT: Okay. Counsel, Juror Number 74

10:46:15 12 indicated that she has travel on July 1st. Just to

10:46:21 13 avoid any possible conflict with the trial, the Court is

10:46:26 14 inclined to strike her for cause.

10:46:28 15 Any objection from the defense?

10:46:31 16 MR. JUPITER: No, Your Honor.

10:46:32 17 THE COURT: From the government?

10:46:33 18 MR. POTTER: No, Judge.

10:46:34 19 THE COURT: All right.

10:46:34 20 For cause from the government?

10:46:40 21 MR. POTTER: None, Judge.

10:46:41 22 THE COURT: For cause from the defense?

10:46:43 23 MR. JUPITER: Yes, Your Honor. Juror Number 62

10:46:46 24 in seat number 9.

10:47:00 25 THE COURT: What's the basis?

10:47:09 1 MR. JUPITER: I think I have that wrong,
10:47:11 2 Your Honor.

10:47:32 3 THE COURT: Do you have a basis, Attorney?

10:47:34 4 MR. JUPITER: No, Your Honor.

10:47:35 5 THE COURT: Okay. That's denied.

10:47:38 6 Anyone else for cause?

10:47:41 7 MR. JUPITER: Yes, Your Honor. It -- I have
10:47:47 8 Juror Number -- Juror Number 41. And Juror Number 41
10:48:08 9 was hesitant --

10:48:09 10 THE COURT: In what seat?

10:48:11 11 MR. JUPITER: In seat number 15.

10:48:13 12 THE COURT: Okay.

10:48:15 13 MR. JUPITER: She indicated that she was the
10:48:17 14 victim of a crime, I believe child abuse for several
10:48:22 15 years. She was very hesitant when the Court asked
10:48:26 16 whether or not she could be fair, and made some remarks
10:48:29 17 that she did not -- she could not -- did not believe
10:48:33 18 that she could go -- that this would be -- something
10:48:38 19 that she could be -- I forgot the exact words. I don't
10:48:43 20 want to misquote it. But she did not appear she could
10:48:46 21 presume someone to be innocent.

10:48:48 22 She mentioned that her stepfather was never
10:48:52 23 prosecuted. And she -- there's no guarantee that she
10:48:56 24 could follow the presumption of innocence. And I think
10:49:00 25 that she -- I don't think the panel was really asked any

10:49:05 1 questions about being able to presume Ms. Morales's
10:49:12 2 innocence and being able to follow the presumption of
10:49:13 3 innocence.

10:49:14 4 THE COURT: All right. The Court had an
10:49:15 5 opportunity to observe Juror 41, who is in seat number
10:49:18 6 15.

10:49:18 7 The juror did answer the Court's questions, the
10:49:23 8 Court thought as best as she could when you're
10:49:26 9 disclosing something like child molestation.

10:49:30 10 And she proceeded, I think, to also mention about
10:49:33 11 other relatives who had been in the system, I believe an
10:49:37 12 uncle or someone who had been convicted as well. But
10:49:40 13 she seemed to be forthright.

10:49:42 14 What's the government's position?

10:49:44 15 MR. POTTER: Our position is that she was
10:49:46 16 forthright, Judge, and she did respond to the Court's
10:49:51 17 questions and she did say she can be impartial. She did
10:49:54 18 say she can follow the Court's instructions. I see no
10:49:56 19 basis for her for cause.

10:49:57 20 THE COURT: Okay. That's denied.

10:49:59 21 Anything else?

10:50:13 22 MR. JUPITER: The Juror Number 83 --

10:50:16 23 THE COURT: In what seat?

10:50:17 24 MR. JUPITER: Seat number 21 has -- is a peace
10:50:31 25 agent, I believe, in Internal Affairs. She has many

10:50:38 1 connections with several Guard members, I think more so
10:50:42 2 on the government's side. She -- and my main basis --
10:50:54 3 actually our basis, Your Honor, is that she is a peace
10:50:59 4 agent. She is law enforcement. And we would think that
10:51:01 5 she -- and she also heard this on the news. So we would
10:51:04 6 ask that she be stricken for cause.

10:51:08 7 MR. POTTER: What number is she?

10:51:10 8 MR. JUPITER: Number 83 in seat 21, on page 3.

10:51:26 9 THE COURT: Well, she said she could be fair
10:51:28 10 and impartial. And she did say she could listen to the
10:51:31 11 evidence fairly and impartially. She didn't have any
10:51:35 12 involvement in this case, nor is it a case that's being
10:51:39 13 prosecuted by the Virgin Islands Government.

10:51:42 14 If you're a police officer you have a right to
10:51:44 15 claim an exemption. That's why I was trying to find out
10:51:50 16 whether she was a police officer. I guess she said
10:51:53 17 she's an Internal Affairs agent. She said she's a peace
10:51:57 18 officer. But she said she could be fair and impartial.

10:51:59 19 What's the government's position?

10:52:01 20 MR. POTTER: Your Honor, she did say she could
10:52:02 21 be fair and impartial. I don't think the mere fact that
10:52:05 22 she's a peace officer should prevent her from being able
10:52:08 23 to serve on this jury.

10:52:09 24 THE COURT: Okay. That's denied.

10:52:11 25 Anything else?

10:52:14 1 MR. JUPITER: No, Your Honor.

10:52:14 2 THE COURT: Okay. Let me have your
10:52:16 3 peremptories; simultaneous exchange.

10:52:21 4 MR. JUPITER: Can I get one minute?

10:52:23 5 THE COURT: All right. One minute.

10:52:24 6 MR. POTTER: Can I have one minute, too, Judge.

10:52:26 7 THE COURT: One collective minute.

10:52:33 8 I'm sure counsel is familiar with my policies and
10:52:35 9 procedures. I know that the magistrate went over, and I
10:52:38 10 think I issued an order just last week informing counsel
10:52:41 11 that they had to be familiar with it, which has always
10:52:44 12 been simultaneous exchanges.

10:52:48 13 MR. POTTER: Of course, Judge.

10:55:49 14 (Pause)

10:55:50 15 THE COURT: All right. The government for its
10:55:51 16 peremptories strikes Juror Number 82 in seat 4, 26 in
10:55:56 17 seat 5, 80 in seat 7, 29 in seat 16, 3 in 23 -- who had
10:56:09 18 been struck for cause by the Court -- 16 in seat 29.

10:56:20 19 The defense for its peremptories strikes juror 4 in
10:56:24 20 seat 1, juror 68 in seat 3, juror 80 in seat 7, who the
10:56:33 21 plaintiff -- prosecutor had struck, 42 in seat 8, juror
10:56:39 22 62 in seat 9, juror 38 in seat 13, juror 41 in seat 15,
10:56:50 23 juror 6 in seat 17, juror 40 in seat 20, and juror 83 in
10:57:01 24 seat 21.

10:57:27 25 That brings, by my count, the 12th juror as Juror

10:57:32 1 Number 9 in seat 30.

10:57:36 2 Juror Number 60 in seat 31. Does the government
10:57:41 3 wish to exercise a peremptory with respect to Juror
10:57:45 4 Number 60 in seat 31?

10:57:56 5 MR. POTTER: We'll accept 60.

10:57:59 6 THE COURT: Attorney Jupiter?

10:58:02 7 MR. JUPITER: I move to strike.

10:58:04 8 THE COURT: Okay. That's your -- so defense
10:58:07 9 wishes to use a peremptory -- its alternate peremptory.
10:58:11 10 Okay.

10:58:15 11 Juror 22 in seat 32. Does the government wish to
10:58:19 12 exercise a peremptory?

10:58:25 13 MR. POTTER: No, Judge.

10:58:26 14 THE COURT: Okay. The defense has no
10:58:28 15 peremptories. So that's alternate number 1.

10:58:31 16 Two alternates. One strike.

10:58:38 17 Okay, juror 25 in seat 34, does the government wish
10:58:42 18 to exercise a peremptory as to that person being the
10:58:45 19 second alternate?

10:58:45 20 MR. POTTER: No, Judge.

10:58:46 21 THE COURT: Okay. That's our second alternate.

10:58:48 22 I believe it is one strike for two alternates,
10:58:52 23 correct?

10:58:53 24 MR. JUPITER: I believe so.

10:58:54 25 THE COURT: All right. That's our jury. Thank

10:58:57 1 you, Counsel.

10:58:57 2 MR. POTTER: Thank you, Judge.

10:58:59 3 (End sidebar discussion, open court as follows:)

10:59:09 4 THE COURT: If you hear your number, please
10:59:12 5 have a seat in the gallery, in this section or this
10:59:18 6 section.

10:59:18 7 Juror Number 4, 68, 82, 26, 80, 42, 62, 74, 38, 41,
10:59:43 8 29, 6, 40, 83, 83, number 3, 58, 27, 16, 60 -- where is
11:00:31 9 juror 60?

11:00:41 10 Juror 76, 76 -- Juror 12, 44.

11:01:36 11 Juror 5, raise your card.

11:01:40 12 Juror 31. Juror 21, Juror 21. Juror 47, raise
11:01:55 13 your card. 47, just raise your card. You can have a
11:02:02 14 seat.

11:02:02 15 Okay. 53, raise your card. 72, raise your card.
11:02:09 16 15, raise your card. 84, 28, 57, 45, 9, 22, 25.

11:02:41 17 All right. Ladies and gentlemen of the jury, you
11:02:43 18 will be the jury that will be hearing this case. Those
11:02:47 19 of you who are sitting in the middle section or that
11:02:52 20 section, you will not be hearing this case.

11:02:57 21 For those of you who were here but weren't
11:03:01 22 selected, let me thank you. I know the attorneys thank
11:03:04 23 you, the Court thanks you, your community thanks you.
11:03:09 24 They also serve who stand and wait.

11:03:12 25 If there was a need for your services, you would

11:03:15 1 have been called upon. It's never easy serving as a
11:03:19 2 juror, but when you do make yourself available, you join
11:03:23 3 a distinguished group.

11:03:25 4 The Vice President of the US, Joe Biden, as a
11:03:29 5 sitting Vice President, went to his home state to make
11:03:31 6 himself available for jury service.

11:03:33 7 Oprah Winfrey made herself available for jury
11:03:37 8 service and served. Elena Kagan, a Justice of the US
11:03:41 9 Supreme Court, made herself available for jury service.

11:03:44 10 It's not something to be avoided, but it's a
11:03:46 11 privilege and an honor to serve your country, your court
11:03:50 12 and your community.

11:03:50 13 So thank you for your patience. Thank you for your
11:03:54 14 cooperation, those of you who were not selected.

11:03:56 15 For those of you who were selected, we'll begin the
11:03:59 16 trial in the next seven minutes or so.

11:04:01 17 For those of you who were not, you can leave your
11:04:05 18 cards on the benches and you can exit the court.

11:04:13 19 For the rest of you, you can proceed into the jury
11:04:17 20 deliberation room in a moment.

11:04:34 21 Those of who you have been selected, you can
11:04:36 22 proceed into the jury deliberation room.

11:05:46 23 (Jury not present.)

11:05:47 24 THE COURT: All right. Counsel, is there
11:05:49 25 anything we need to tend to before we resume in

11:05:51 1 five minutes?

11:05:52 2 From the government?

11:05:53 3 MR. POTTER: Nothing from the government, Your
11:05:55 4 Honor.

11:05:55 5 THE COURT: Attorney Jupiter?

11:05:56 6 MR. JUPITER: Well, Your Honor, there are still
11:05:59 7 pending motions. I don't know if the Court wants to
11:06:03 8 take them up.

11:06:04 9 THE COURT: Yes, I'm taking them under
11:06:05 10 advisement.

11:06:06 11 I know you have a pending motion that I believe was
11:06:09 12 filed yesterday and another one that was filed before
11:06:11 13 that, covering dismissal. Yes, it's under advisement.
11:06:15 14 I know the one that was filed yesterday the government
11:06:18 15 has not had an opportunity to file its response yet. So
11:06:23 16 but it's under advisement. It's without prejudice to
11:06:26 17 the defendant.

11:06:26 18 All right. Five minutes, Counsel.

11:06:29 19 (Court in recess, 11:06 a.m.)

11:37:32 20 (After recess, 11:37 a.m., jury present.)

11:37:35 21 (Jury sworn.)

11:37:38 22 THE COURT: Good morning, again, Members of the
11:37:38 23 Jury.

11:37:38 24 PRELIMINARY JURY INSTRUCTIONS

11:37:42 25 THE COURT: Now that you've been sworn, let me

11:37:43 1 give you some preliminary instructions that should guide
11:37:45 2 you in your participation in the trial.

11:37:47 3 It will be your duty to find from the evidence what
11:37:50 4 the facts are. You and you alone will be the judges of
11:37:53 5 the facts.

11:37:54 6 You will then have to apply to those facts the law
11:37:57 7 as the Court will give it to you. You must follow the
11:38:00 8 law whether you agree with it or not.

11:38:03 9 Nothing the Court may say or do during the course
11:38:05 10 of the trial is intended to indicate, or should be taken
11:38:08 11 by you as indicating, what your verdict should be.

11:38:11 12 The evidence from which you will find the facts
11:38:14 13 will consist of the testimony of witnesses, documents,
11:38:17 14 and other things received into evidence or into the
11:38:21 15 record as exhibits, and any facts that the lawyers agree
11:38:26 16 to or stipulate to, or that I may instruct you to find.

11:38:30 17 Certain things are not evidence and must not be
11:38:32 18 considered by you. I'll list some of those things for
11:38:35 19 you.

11:38:35 20 Statements, arguments and questions of lawyers are
11:38:38 21 not evidence.

11:38:40 22 Objections to questions are not evidence. Lawyers
11:38:43 23 have an obligation to their clients to make objections
11:38:46 24 when they believe evidence being offered is improper
11:38:49 25 under the Rules of Evidence.

11:38:50 1 You should not be influenced by the objection or by
11:38:53 2 the Court's ruling on it. If the objection is
11:38:57 3 sustained, ignore the question. If it is overruled,
11:39:01 4 treat the answer like any other.

11:39:03 5 If you're instructed that some item of evidence is
11:39:05 6 received for a limited purpose only, you must follow
11:39:08 7 that instruction.

11:39:09 8 Testimony that the Court has excluded or told you
11:39:11 9 to disregard is not evidence and must not be considered.

11:39:15 10 Anything you may have seen or heard outside the
11:39:19 11 courtroom is not evidence and must be disregarded. You
11:39:22 12 are to decide the case solely on the evidence presented
11:39:27 13 here in the courtroom.

11:39:28 14 There are two kinds of evidence, direct and
11:39:32 15 circumstantial.

11:39:32 16 Direct evidence is direct proof of facts, such as
11:39:34 17 testimony of an eyewitness.

11:39:36 18 Circumstantial evidence is proof of facts from
11:39:38 19 which you may infer or conclude that other facts exists.

11:39:41 20 I'll give you further instructions on these as well
11:39:44 21 as other matters at the end of the case, but keep in
11:39:47 22 mind that you may consider both kinds of evidence.

11:39:50 23 It will be up to you to decide which witnesses to
11:39:53 24 believe, which witnesses not to believe, and how much of
11:39:56 25 any witness's testimony to accept or reject.

11:40:00 1 I'll give you some guidelines for determining the
11:40:03 2 credibility of witnesses at the end of the case.

11:40:05 3 As you know, this is a criminal case. There are
11:40:09 4 three basic rules about a criminal case that you must
11:40:12 5 keep in mind.

11:40:13 6 First, the defendant is presumed innocent until
11:40:16 7 proven guilty. The indictment brought by the government
11:40:19 8 against the defendant is only an accusation, nothing
11:40:22 9 more. It is not proof of guilt or anything else. The
11:40:25 10 defendant therefore starts out with a clean slate.

11:40:28 11 Second, the burden of proof is on the government
11:40:30 12 until the very end of the case. The defendant has no
11:40:33 13 burden to prove her innocence or to present any evidence
11:40:36 14 or to testify.

11:40:37 15 Since the defendant has the right to remain silent,
11:40:40 16 the law prohibits you from arriving at your verdict by
11:40:43 17 considering that the defendant may not have testified.

11:40:46 18 Third, the government must prove the defendant's
11:40:48 19 guilt beyond a reasonable doubt.

11:40:50 20 I'll give you further instructions on this point
11:40:53 21 later, but bear in mind that in this respect a criminal
11:40:56 22 case is different from a civil case.

11:40:58 23 Now, a few words about your conduct as jurors.

11:41:01 24 You as jurors must decide this case based solely on
11:41:04 25 the evidence presented here within the four walls of

11:41:07 1 this courtroom.

11:41:08 2 This means that during the trial you must not
11:41:10 3 conduct any independent research about this case, the
11:41:14 4 matters in this case and the individuals involved in
11:41:17 5 this case. In other words, you must not consult
11:41:22 6 dictionaries or references or search the Internet,
11:41:26 7 websites or blogs.

11:41:27 8 Please do not try to find information of any source
11:41:32 9 outside the confines of this courtroom.

11:41:34 10 Until you retire to deliberate, you may not discuss
11:41:37 11 this case with anyone, even with your fellow jurors.

11:41:39 12 After you retire to deliberate, you may begin
11:41:42 13 discussing the case with your fellow jurors, but you
11:41:44 14 cannot discuss the case with anyone else until you have
11:41:47 15 returned a verdict and the case is at an end.

11:41:51 16 I know that many of you use cell phones,
11:41:55 17 Blackberries, iPhones, smart phones, the Internet and
11:41:59 18 also tools of technology.

11:42:00 19 You must not talk to anyone at any time about this
11:42:04 20 case, or use these tools electronically about anyone
11:42:07 21 about this case. This includes your family and friends.

11:42:10 22 You may not communicate with anyone about the case
11:42:13 23 on your cell phone, through e-mail, Blackberry, iPhone,
11:42:17 24 text messaging, Twitter, or through any blog or website,
11:42:21 25 including Facebook, Google, MySpace, LinkedIn or

11:42:26 1 Youtube. You may not use any similar technology of
11:42:29 2 social media, even if I have not specifically mentioned
11:42:32 3 it here.

11:42:33 4 I expect you will perform -- or inform me as soon
11:42:38 5 as you become aware of another juror's violations of
11:42:41 6 these instructions.

11:42:41 7 A juror who violates these restrictions jeopardizes
11:42:45 8 the fairness of these proceedings and a mistrial could
11:42:47 9 result, which would require the entire trial process to
11:42:50 10 start over.

11:42:51 11 Finally, do not form any opinion until all the
11:42:54 12 evidence is in. Keep an open mind until you start your
11:42:58 13 deliberations at the end of the case.

11:42:59 14 All right. Now if you want to take notes you can
11:43:03 15 do so, but bear in mind when you take notes you need to
11:43:06 16 strike the appropriate balance so you can also focus on
11:43:10 17 what any witnesses might be testifying to.

11:43:12 18 I'm sure you will be able to strike the appropriate
11:43:15 19 balance. So you can take notes if you choose to, and
11:43:17 20 also pay attention to what the witness is saying.

11:43:19 21 We'll now begin the case -- one final note about
11:43:24 22 your notes. They are for your personal use only. You
11:43:27 23 may not take them home at night. They're for your use
11:43:30 24 here.

11:43:30 25 We'll now begin the case with the opening statement

11:43:32 1 from the government.

11:43:33 2 Attorney Potter?

11:43:34 3 MR. POTTER: Thank you, Judge.

11:43:34 4 OPENING STATEMENT BY THE GOVERNMENT

11:43:42 5 MR. POTTER: Members of the Jury, good morning.

11:43:48 6 This case is about greed and it is about deception.

11:43:54 7 Around 1983, the defendant in this case, Sherrymae

11:44:00 8 Morales, begin her employment as a member of the Virgin

11:44:05 9 Islands National Guard.

11:44:10 10 By all accounts --

11:44:11 11 THE COURT: Stop.

11:44:12 12 Pass those out after the opening statements. Just

11:44:17 13 hold on to them, sir.

11:44:28 14 MR. POTTER: Continue, Judge?

11:44:29 15 THE COURT: Yes, go ahead.

11:44:31 16 MR. POTTER: And by all accounts she was a good
11:44:38 17 employee.

11:44:39 18 She was a full-time member of the Guard for
11:44:41 19 approximately 20 years, and in those 20 years she held
11:44:45 20 very important positions within the Guard.

11:44:53 21 She was a military technician. She was a human
11:44:55 22 resource officer. She was the recruitment and training
11:44:59 23 officer or commander.

11:45:08 24 Somewhere around 2003, the defendant left the
11:45:11 25 National Guard, I think on medical justification.

11:45:21 1 Somewhere around 2007, the defendant got a contract
11:45:27 2 with a company called Military Personnel Services
11:45:33 3 Corporation, MPSC.

11:45:41 4 And the MPSC hired Ms. Morales to be what they call
11:45:48 5 an ESGR. Forgive all these terms. And ESGR stands for
11:45:54 6 Employee Support for the Guard and Reserve.

11:46:00 7 So from 2007 up until 2010, Morales held this
11:46:09 8 position solely.

11:46:15 9 In 2010, Ms. Morales, the defendant in this case,
11:46:18 10 she asked her supervisor -- I think the testimony will
11:46:23 11 be the supervisor was General Rivera.

11:46:28 12 She told him that she wanted to come back into the
11:46:34 13 Guard. She wanted to become a full-time member of the
11:46:38 14 Guard.

11:46:38 15 And you will hear testimony in this case that the
11:46:40 16 general told her: Not a problem; but to come back into
11:46:51 17 the Guard you will have to submit yourself to a
11:46:53 18 background check, and you're going to have to resign the
11:46:55 19 position that you currently hold.

11:47:00 20 And she was holden to understand the ESGR position
11:47:06 21 is a position that works with Guard members who are
11:47:09 22 deployed overseas, and then who come back from
11:47:16 23 deployment, and the ESGR is responsible for assisting
11:47:22 24 them in their return to their full-time job. So that's
11:47:26 25 kind of what the defendant was doing when she got hired

11:47:28 1 in 2007.

11:47:37 2 Now, when the defendant indicated she wanted to
11:47:40 3 come back into the Guard now as a full-time Guard
11:47:43 4 employee, she applied. She was selected. And she
11:47:51 5 returned to the Guard in March of -- March of 2010 as a
11:47:59 6 full-time member of the Guard. And I submit to you,
11:48:12 7 ladies and gentlemen of the jury, this is where the
11:48:13 8 deception and the greed began.

11:48:18 9 Because when the defendant came back into the
11:48:23 10 Guard, remember that the general told her: You must
11:48:26 11 resign your ESGR position.

11:48:34 12 The facts in this case will be that the defendant
11:48:36 13 did not resign her ESGR position when she was hired as a
11:48:41 14 full-time member of the Guard.

11:48:47 15 The ESGR, you will hear, is a position that works
11:48:51 16 Monday through Friday, 8:00 to 5:00.

11:48:57 17 As a full-time member of the Guard, the defendant
11:49:02 18 works Monday through Friday, 8:00 to 5:00.

11:49:09 19 When the defendant was hired she filled out a
11:49:16 20 direct deposit form that permitted the Guard to put her
11:49:21 21 pay, to wire her pay directly into her bank account.

11:49:27 22 So the evidence would show that in any 40-hour
11:49:34 23 workweek, the defendant was receiving two paychecks, one
11:49:43 24 as an ESGR contract employee, and a second one as a
11:49:49 25 full-time member of the Guard. In effect, she is

11:49:54 1 getting paid for 80 hours in a 40-hour workweek.

11:50:06 2 You will hear through testimony of the witnesses
11:50:09 3 that the defendant went to her supervisor, General Elton
11:50:15 4 Lewis, who at that time was the chief of staff of the
11:50:19 5 National Guard and her direct supervisor.

11:50:29 6 He will tell you that once the defendant came on
11:50:32 7 board in March of 2010, she came to him and she said to
11:50:38 8 him: I want to keep my ESGR job at the same time that
11:50:46 9 I'm working as a full-time military tech position -- a
11:50:51 10 contract employee.

11:50:56 11 And you will hear the general said he told her: Of
11:51:00 12 course, you know you can't do that. You must resign the
11:51:03 13 ESGR position if you want to remain as a full-time
11:51:06 14 member of the Guard.

11:51:13 15 The evidence will show that from March of 2010 up
11:51:18 16 until June of 2010, the defendant did not resign the
11:51:24 17 ESGR position. She continued to get paid 40 hours from
11:51:33 18 Monday through Friday work for the ESGR, and she got a
11:51:37 19 second paycheck Monday through Friday, 8:00 to 5:00, for
11:51:41 20 the military tech position.

11:51:45 21 Somewhere around June of 2010, three months,
11:51:52 22 three months, the defendant resigned the military -- the
11:51:57 23 ESGR position. And in September of 2010 she went back
11:52:06 24 and she asked to be reinstated into her ESGR position,
11:52:12 25 which was done. And, again, she's now rehired into the

11:52:20 1 ESGR position and she is still a full-time member of the
11:52:24 2 National Guard.

11:52:24 3 And you will hear from the ESGR, from the MPSC
11:52:32 4 representative, that he had no idea that while he
11:52:35 5 employed the defendant in the ESGR that she was, in
11:52:38 6 fact, a full-time employee of the National Guard.

11:52:40 7 And you will hear how it came to light that members
11:52:44 8 of the Guard and the representative of the MPSC both
11:52:50 9 found out that this defendant was being paid by both of
11:52:55 10 them for working identical workweeks.

11:53:03 11 That's the substance of what this case is about, in
11:53:05 12 her keeping these two jobs. You'll find that the
11:53:12 13 defendant made, between March of 2010 and June of 2011,
11:53:16 14 in excess of \$200,000 being paid for both jobs. She got
11:53:22 15 paid approximately \$89,000 a year as a military tech
11:53:28 16 employee, and she got paid approximately 62 or \$60,000 a
11:53:32 17 year as an ESGR contract worker.

11:53:36 18 It wasn't proper. It wasn't permitted. And this
11:53:40 19 is what this case is about.

11:53:42 20 We have charged the defendant with wire fraud. We
11:53:46 21 have charged the defendant with false statements,
11:53:49 22 producing false time sheets, and we have charged the
11:53:52 23 defendant with committing program fraud against the
11:53:56 24 United States.

11:53:56 25 That's the substance of the government's case. I

11:53:59 1 ask you to pay close attention to the case as we call
11:54:02 2 the witnesses, and at the end I hope you agree with me
11:54:05 3 that the defendant is guilty as charged. And we are
11:54:08 4 going to ask you to return to the jury room at that time
11:54:10 5 and return a guilty verdict against this defendant.

11:54:12 6 Thank you.

11:54:14 7 THE COURT: Thank you, Attorney Potter.
11:54:16 8 Attorney Jupiter.

11:54:41 9 MR. JUPITER: May it please the Court?

11:54:42 10 THE COURT: Yes.

11:54:42 11 OPENING STATEMENT BY THE DEFENDANT

11:54:43 12 MR. JUPITER: Ms. Delosa, Ms. Morales,
11:54:48 13 Mr. Morales, Counsel, ladies and gentlemen of the jury.

11:54:51 14 Good morning.

11:54:53 15 My name is Omodare Jupiter, and I represent
11:54:57 16 Ms. Sherrymae Morales.

11:54:59 17 Ms. Morales never deceived anyone. She never
11:55:03 18 fooled anyone. She never tricked anyone. Ms. Morales
11:55:10 19 worked for the National Guard and she worked for ESGR.
11:55:14 20 And she was recruited for those positions because she
11:55:18 21 knows how to get the job done.

11:55:22 22 She performed well. She was given raises. She was
11:55:28 23 commended. She did all of her work openly. She earned
11:55:34 24 every penny. And she did never, ever, try to fool
11:55:41 25 anyone, and nor did she ever steal anything.

11:55:47 1 Ms. Morales is not guilty.

11:55:48 2 Now, get a little background, before we get to 2007
11:55:54 3 when Ms. Morales became the ESGR, the employer support
11:56:00 4 for the Reserve -- for the Guard and the Reserve, before
11:56:04 5 she became the representative of that area.

11:56:06 6 Mr. Potter is correct, she had a long career early
11:56:11 7 on with the National Guard, and she excelled at
11:56:17 8 everything she did. And over the years and over her
11:56:20 9 career she became very good at writing, at presenting,
11:56:25 10 and came to specialize in something called change
11:56:31 11 management. She was a really good organizational
11:56:33 12 person.

11:56:40 13 She also owned real estate company. And
11:56:46 14 Mr. Morales almost all her adult life has been someone
11:56:48 15 who works from early in the morning to late at night.
11:56:53 16 And the evidence in this case will show that. And
11:56:57 17 that's why people gravitate towards her.

11:56:59 18 Now, ladies and gentlemen of the jury, I won't go
11:57:01 19 into every piece of this story that is about to unfold
11:57:05 20 before you. We have a bunch of differences in this
11:57:11 21 case. But one thing that's going to be clear is that
11:57:13 22 Sherrymae Morales never had any intent to deceive
11:57:17 23 anyone, and for that reason she is not guilty of all of
11:57:19 24 these charges.

11:57:20 25 Now, in 2003 Sherrymae Morales started a realty

11:57:27 1 company right over here on Princess in St. Croix. She
11:57:29 2 grew up in St. Croix. She was part of the National
11:57:32 3 Guard. But she spent a lot of her adult life on the
11:57:35 4 mainland. She was educated on the mainland. She worked
11:57:38 5 over there for various different corporations, and she
11:57:42 6 excelled in her career. She mentored others and brought
11:57:46 7 them into different positions, particularly in the
11:57:49 8 Guard.

11:57:49 9 She came in way back in 1983. She rose through the
11:57:56 10 ranks. She developed her career. She came over here,
11:58:00 11 started her consulting firm. At the same time she
11:58:03 12 started a real estate company. And she did other
11:58:06 13 things. And she would work from 7:30 in the morning
11:58:09 14 till late, late hours in -- at night. And people knew
11:58:13 15 this. She was known in the community very well. She
11:58:22 16 knew how to get things done.

11:58:24 17 So when a position, a contract position became open
11:58:27 18 with the employer support for the Guard and Reserve,
11:58:31 19 ESGR, this is a position that you are technically hired
11:58:39 20 by this private corporation, and I'm just going to call
11:58:42 21 it MPSC, give you the initials, rather than keep saying
11:58:46 22 all of the different titles.

11:58:49 23 But, the people who -- every state as well as every
11:58:55 24 territory has someone who is responsible for being a
11:59:01 25 liaison for people returning from deployments and people

11:59:06 1 who are in the Guard.

11:59:07 2 This position was difficult to fill in St. Croix.

11:59:12 3 It was a contract position. And when the position

11:59:25 4 became available and MPSC contacted the leadership at

11:59:29 5 the Guard, they recruited Sherrymae Morales.

11:59:31 6 Sherrymae Morales indicated at that time that she

11:59:37 7 had a real estate company, she indicated she had a

11:59:43 8 consulting company, and it was clear she was not going

11:59:51 9 to be able to take that position unless she can continue

11:59:54 10 in -- running those companies.

11:59:56 11 Now, from -- she agreed to take that position, and

12:00:01 12 from 2007 to 2010 she made something out of what was

12:00:08 13 before a dormant position. And she got to know those

12:00:13 14 duties and how to get that work done, and when that work

12:00:16 15 needed to be done.

12:00:17 16 It entailed building a volunteer base that she had

12:00:21 17 to work -- she had to build it up and work with, and

12:00:25 18 these were volunteers who worked jobs. So she had to

12:00:29 19 work with them outside of their jobs.

12:00:31 20 She had to work with guardsmen who were having

12:00:35 21 trouble with their employment.

12:00:37 22 She had to do things over the weekend.

12:00:38 23 The duties she had to do were things -- by and

12:00:42 24 large were things that she could do outside of the work

12:00:45 25 hours and, to be honest with you, most of the things had

12:00:49 1 to be done outside of work hours.

12:00:51 2 She was never told that her work hours for the ESGR
12:00:58 3 position had to be from 8:00 to 5:00.

12:01:03 4 She was never told that she could not work her real
12:01:06 5 estate company or her consulting company.

12:01:10 6 We fast-forward to 2010. She had been working this
12:01:17 7 ESGR position for close to three years, about two and a
12:01:22 8 half years.

12:01:22 9 Colonel Lewis, the chief of staff at the National
12:01:28 10 Guard, had a strategy plan he wanted to implement while
12:01:33 11 he was there at the Guard. And in 2010, Caroline Adams
12:01:40 12 was deployed. She was the military technician. She was
12:01:44 13 deployed, and her position was going to be open for
12:01:48 14 about a year. Ms. Morales was recruited again to come
12:01:51 15 back into the Guard and to take the military tech
12:01:56 16 position.

12:01:56 17 Ms. Morales at that time wanted to stop doing --
12:02:00 18 she did take the military tech position. At that time
12:02:03 19 she wanted to stop doing the ESGR position, not because
12:02:11 20 she couldn't do it, but because it was going to be a big
12:02:15 21 headache for her to keep her real estate company going
12:02:17 22 and for her to continue to do this and also to continue
12:02:20 23 to do the ESGR work.

12:02:25 24 She contacted Baron Hignite, who does the ESGR
12:02:32 25 overseas, all the ESGR people throughout the country,

12:02:36 1 and she told Mr. Hignite that she wanted to stop.

12:02:41 2 He was like: Sherry, you've been the best thing.
12:02:43 3 We need you to continue doing this. Can you stay until
12:02:46 4 we get a replacement?

12:02:48 5 She said: Yes. As soon as we get a replacement,
12:02:51 6 I'm out of here.

12:02:56 7 She continued to do both positions openly, without
12:03:00 8 any problem, until June, when she got a major assignment
12:03:07 9 from Colonel Lewis. And that assignment was to do a
12:03:11 10 VING leadership conference, to put it together and run
12:03:14 11 it. It was going to be a major assignment.

12:03:17 12 She contacted Baron Hignite and said: I can't go
12:03:21 13 any further.

12:03:22 14 And she resigned from the ESGR because she could
12:03:25 15 not do both at that time.

12:03:28 16 Now, you're going to find out even after that
12:03:33 17 resignation, once again, they couldn't find a
12:03:38 18 replacement for Ms. Morales, even though she tried.
12:03:43 19 Every replacement she tried to bring to them, they said
12:03:46 20 the person didn't have this qualifications, this person
12:03:49 21 wasn't good enough, so on and so forth.

12:03:52 22 So once again, they asked her: Could you come back
12:03:55 23 and do the ESGR position until we find a replacement?

12:04:02 24 And you'll see, right after the VING leadership
12:04:07 25 conference had taken place --

12:04:10 1 THE CLERK: One more minute.

12:04:11 2 MR. JUPITER: -- Ms. Morales resumed as the
12:04:15 3 ESGR person. And you'll see that the leadership was
12:04:18 4 contacted at the Guard to say that they rehired
12:04:23 5 Ms. Morales. And you'll see at the Guard that everyone
12:04:26 6 knew Ms. Morales was doing both of those positions.

12:04:31 7 Ladies and gentlemen, the evidence in this case is
12:04:33 8 going to be clear. She had no intent to deceive anyone.
12:04:37 9 She didn't lie. She didn't steal. She's not guilty.

12:04:44 10 THE COURT: Thank you, Attorney Jupiter.
12:04:46 11 Attorney Potter?

12:04:47 12 MR. POTTER: Yes, Judge.
12:04:53 13 The government calls Aubrey Ruan, Judge.
12:06:17 14 (Pause.)

12:06:17 15 THE CLERK: Please stand and raise your right
12:06:18 16 hand to take the oath.

12:06:27 17 THE WITNESS: Yes, I do.

12:06:29 18 THEREUPON, AUBREY RUAN, JR., having been duly
12:06:31 19 sworn, was examined and testified as follows:

12:06:31 20 DIRECT EXAMINATION

12:06:32 21 BY MR. POTTER:

12:06:33 22 Q. Good afternoon, sir.

12:06:33 23 A. Good afternoon.

12:06:34 24 Q. Could you give us your full name for the record,
12:06:36 25 please. Spell both your first and your last name for

12:06:40 1 the court reporter.

12:06:43 2 A. My full name is Aubrey, A-u-b-r-e-y; middle name is
12:06:49 3 Lionel; last name, Ruan, R-u-a-n, Jr.

12:06:53 4 Q. And are you currently employed, sir?

12:06:55 5 A. Yes, I am.

12:06:56 6 Q. And how are you employed?

12:06:57 7 A. I'm employed as a contractor with the IIF Data
12:07:02 8 Solutions out of National Guard Bureau, as a contract
12:07:05 9 employee working out of the Joint Operations Center for
12:07:09 10 the National Guard.

12:07:13 11 Q. And how long have you held that position?

12:07:17 12 A. I've held that position since October 2012.

12:07:22 13 The first company I worked for was Icoon
12:07:28 14 Corporation, and now I'm with IIF Data Solutions.

12:07:32 15 Q. And was there a time that you were a full-time
12:07:34 16 member of the Guard, Virgin Islands National Guard?

12:07:36 17 A. Yes. I worked for the National Guard for quite --
12:07:38 18 many years.

12:07:39 19 Q. And tell us when, when you began.

12:07:43 20 A. I originally began in 1981 as a recruiter/admin
12:07:52 21 specialist, and I worked my way up from that all the way
12:07:56 22 up to the director of the joint staff in -- up until
12:08:00 23 2012, September.

12:08:06 24 Q. Now in -- let me direct your attention to 2007.

12:08:09 25 How were you employed with the Guard in 2007?

12:08:14 1 A. In 2007, I left the position of director of
12:08:17 2 operations and was hired as the vice chief of staff for,
12:08:24 3 for the Armory.

12:08:27 4 Q. In 2007, did you know Sherrymae Morales?

12:08:30 5 A. I've known Sherrymae Morales from the early '80s.
12:08:36 6 I've known her a long time.

12:08:39 7 Q. And what position do you know that she held with
12:08:46 8 the Guard?

12:08:48 9 A. In 2007 she held, I think, the ESGR position.

12:08:55 10 Q. Was that with the Guard or was that --

12:08:57 11 A. That's with the contractor, the National Guard
12:09:06 12 Bureau.

12:09:06 13 Q. And in your position, did you know what the ESGR
12:09:10 14 did?

12:09:11 15 A. I'm familiar with what they did. They are a
12:09:16 16 liaison between the military and employers. They
12:09:20 17 basically go out and educate the employers on what they
12:09:23 18 can do and what they cannot do, based on federal law as
12:09:28 19 it relates to soldiers in the National Guard working for
12:09:32 20 them, and being allowed to attend training and different
12:09:37 21 aspects that military service entails.

12:09:39 22 Q. And back in 2007, did you have -- between 2007 and
12:09:51 23 between -- did you have knowledge of the work hours of
12:09:53 24 the ESGR contract?

12:09:56 25 A. I wasn't tracking that hard, as to determine how

12:09:59 1 long the hours were for them to work. I know it was a
12:10:01 2 full-time position. The one position was a full-time
12:10:04 3 position with the contractors. Whether they worked on
12:10:07 4 weekends, overtime, I really wasn't tracking it at that
12:10:12 5 time.

12:10:12 6 Q. Okay. Now what position, if any, did you hold with
12:10:23 7 the Guard in 2011?

12:10:24 8 A. In January 2011, I was hired as a director of the
12:10:28 9 joint staff.

12:10:33 10 Q. And at that time when you were hired as director of
12:10:36 11 the joint staff, did you know what position, if any,
12:10:39 12 Sherrymae Morales held in the Guard?

12:10:42 13 A. I -- well, I knew that she had enlisted --
12:10:48 14 reenlisted back into the Guard. I think she enlisted
12:10:52 15 around February 2010, or around that time frame, early
12:10:57 16 part of 2010, and then later she was hired in a
12:11:00 17 temporary position around March 2010.

12:11:04 18 She later applied for and was awarded as an
12:11:09 19 indefinite, in an indefinite position as the information
12:11:15 20 management plans analyst.

12:11:19 21 Q. Now, you mentioned earlier in your testimony that
12:11:21 22 you knew that the defendant held a contract position as
12:11:25 23 an ESGR.

12:11:28 24 A. Yes.

12:11:29 25 Q. In 2011, what, if anything, did you learn regarding

12:11:47 1 the defendant's employment?

12:11:55 2 A. Around June, I got an e-mail from Colonel Cills
12:11:59 3 asking me about the full-time employment of the ESGR
12:12:03 4 coordinator. And I did some investigation to find out
12:12:06 5 if, in fact, it was filled or if it was -- or how to go
12:12:11 6 about the process of filling that position.

12:12:13 7 So I called around to interview, trying to figure
12:12:18 8 out the process to fill that position, and learned that
12:12:20 9 Ms. Morales was still in the position.

12:12:34 10 Q. Now, when you learned that Ms. Morales was still in
12:12:39 11 her position, what, if anything, did you do?

12:12:41 12 A. I contacted my superiors and I asked them if they
12:12:44 13 were aware that she was still in the position or not.

12:12:48 14 Q. Why did you have a need to ask?

12:12:50 15 A. Well, the reason I asked is when I found out she
12:12:56 16 was still employed, the employment at that time was
12:13:02 17 running -- or at the same time with the time she was
12:13:06 18 also employed with us as a GS-12, step 10 position,
12:13:11 19 which was the indefinite position that she was hired in
12:13:14 20 April of 2011.

12:13:15 21 So the times were running at the same time --

12:13:21 22 MR. JUPITER: Objection as to opinion, Your
12:13:23 23 Honor. Move to strike.

12:13:23 24 THE COURT: Overruled.

12:13:23 25 BY MR. POTTER:

12:13:33 1 Q. Okay. So having learned that, what did you do?

12:13:39 2 A. Well, having learned that, I saw it as a conflict.

12:13:43 3 So I moved to ask the adjutant general to conduct an
12:13:50 4 investigation to determine whether in fact there was any
12:13:53 5 violation being done.

12:13:54 6 Q. Okay. Now, who -- if you know, who supervised
12:14:05 7 Sherrymae Morales in 2010 when you changed your position
12:14:12 8 with the Guard?

12:14:13 9 A. When I was the vice chief of staff, she worked
12:14:17 10 directly, at the time, Colonel Elton Lewis.

12:14:22 11 Q. And did she ever come under you?

12:14:24 12 A. She was supposed to come under me in January 2011.
12:14:28 13 And this is the reason why I inquired as to, you know,
12:14:33 14 her employment with the Guard.

12:14:51 15 Q. So in 2011 -- you said January 2011?

12:14:54 16 A. 2011.

12:14:55 17 Q. So between January of 2011 and June of 2011 -- or
12:15:04 18 let's say and May of 2011, what positions or position
12:15:09 19 did you think Sherrymae Morales had with the National
12:15:15 20 Guard?

12:15:16 21 A. What position did I think she had?

12:15:23 22 My understanding at that time, between January 2011
12:15:26 23 and May, was she was the GS-12, step 10 program analyst
12:15:32 24 position.

12:15:40 25 Q. And up until then, sir --

12:15:42 1 A. Correct.

12:15:44 2 Q. -- did you have any knowledge that she still had a
12:15:48 3 contract position with the Virgin Islands National
12:15:52 4 Guard?

12:15:52 5 A. Negative.

12:15:56 6 Q. With the -- sorry -- with the MPSC?

12:16:00 7 A. Negative.

12:16:01 8 Q. Now, you indicated that in 2007, I think it was --
12:16:10 9 correct me if I'm wrong -- that you knew that she was an
12:16:12 10 ESGR?

12:16:14 11 A. Correct.

12:16:24 12 Q. Between Two Thousand -- March 2010 when Ms. Morales
12:16:33 13 started full-time again with the National Guard, and May
12:16:37 14 of 2011, did anyone in the National Guard bring to your
12:16:50 15 attention that Sherrymae Morales was also employed as an
12:16:56 16 ESGR?

12:16:57 17 A. Negative.

12:17:04 18 MR. POTTER: Court's indulgence, Your Honor?

12:17:07 19 THE COURT: Yes.

12:17:19 20 (Counsel conferring.)

12:17:20 21 BY MR. POTTER:

12:17:20 22 Q. And were you the chief of staff in 2011, sir?

12:17:23 23 A. January 2011, I was director of the joint staff.

12:17:26 24 Q. Okay. And in your position as director of the
12:17:30 25 joint staff, do you have personal knowledge of anyone,

12:17:37 1 any full-time member of the Guard working a regular 8:00
12:17:42 2 to 5:00, Monday through Friday workweek --

12:17:47 3 MR. JUPITER: Objection, Your Honor.

12:17:48 4 THE COURT: Sustained.

12:17:52 5 BY MR. POTTER:

12:17:53 6 Q. Are you familiar with a position within the Guard,
12:17:58 7 HRO officer?

12:17:59 8 A. The human resource officer, yes, sir.

12:18:02 9 Q. And what does that person do?

12:18:05 10 MR. JUPITER: Objection as to relevance.

12:18:06 11 THE COURT: Overruled.

12:18:09 12 THE WITNESS: The HRO officer is the officer in
12:18:12 13 the Virgin Islands National Guard that is responsible
12:18:14 14 for full-time employment of basically all of the
12:18:17 15 employees in the Guard.

12:18:19 16 BY MR. POTTER:

12:18:19 17 Q. Are you aware, sir, whether or not the defendant in
12:18:24 18 this case ever held the position as HRO?

12:18:28 19 A. Yes, she did. For the time period, I can't say,
12:18:33 20 but I know for a fact that she did hold that position.

12:18:43 21 Q. Do you know why the defendant was -- do you know
12:18:48 22 when the defendant left the National Guard?

12:18:50 23 A. I believe she left sometime in 2003.

12:18:56 24 Q. After she was rehired in 2010, do you know when she
12:18:59 25 left the Guard after that?

12:19:01 1 A. She left the Guard, I think, April of 2011.

12:19:08 2 Q. And do you know why she left?

12:19:11 3 MR. JUPITER: Objection.

12:19:11 4 THE COURT: Sustained.

12:19:12 5 BY MR. POTTER:

12:19:12 6 Q. Do you have personal knowledge as to why she left
12:19:15 7 the Guard?

12:19:16 8 MR. JUPITER: Objection.

12:19:17 9 THE COURT: Sustained.

12:19:22 10 BY MR. POTTER:

12:19:22 11 Q. What, if anything, do you know regarding the
12:19:27 12 defendant's leaving the Guard?

12:19:30 13 MR. JUPITER: Objection.

12:19:32 14 THE COURT: Are you asking if, what the
12:19:34 15 defendant told this witness? Or are you asking from the
12:19:39 16 universe?

12:19:40 17 MR. POTTER: I'm asking what he knows
12:19:42 18 personally.

12:19:42 19 THE COURT: From anyone in the universe or from
12:19:44 20 this defendant?

12:19:46 21 MR. POTTER: In his position --

12:19:48 22 THE COURT: From anyone in the universe or from
12:19:51 23 this defendant?

12:19:52 24 MR. POTTER: Not from this defendant, from his
12:19:54 25 personal knowledge.

12:19:55 1 THE COURT: Sustained.

12:20:04 2 MR. POTTER: That's all we have, Judge.

12:20:06 3 THE COURT: Attorney Jupiter?

12:20:08 4 CROSS-EXAMINATION

12:20:08 5 BY MR. JUPITER:

12:20:14 6 Q. Good afternoon. Can you hear me?

12:20:18 7 A. Yes.

12:20:18 8 Q. My name is Omodare Jupiter. I represent Sherrymae
12:20:23 9 Morales.

12:20:24 10 It's Colonel Ruan?

12:20:29 11 A. Retired.

12:20:29 12 Q. Retired Colonel Ruan?

12:20:33 13 A. I prefer mister.

12:20:33 14 Q. Mr. Ruan, you never worked the ESGR position?

12:20:37 15 A. Never.

12:20:38 16 Q. And you never volunteered as the position, did you?

12:20:41 17 A. Never.

12:20:42 18 Q. You're not aware of the specifics of how the ESGR
12:20:45 19 work is done?

12:20:46 20 A. No, I'm not.

12:20:47 21 Q. And you were there at the Guard from -- during the
12:20:51 22 period that Ms. Morales was the ESGR representative in
12:20:58 23 2007, weren't you?

12:20:59 24 A. Correct.

12:21:00 25 Q. And you didn't, you didn't interact with

12:21:02 1 Ms. Morales while she was in that position, did you?

12:21:05 2 A. I wouldn't say that I didn't react -- interact. I
12:21:11 3 have seen her doing some of her work, and I've known her
12:21:14 4 for a long time. So we interact, not necessarily about
12:21:17 5 her work, but we talk -- we've talked.

12:21:19 6 Q. Okay. Would you talk on a daily basis? A weekly
12:21:23 7 basis?

12:21:23 8 A. No, no, it would be whenever she had to do a
12:21:27 9 training session or she came around the Guard. Because
12:21:31 10 we work full-time at the headquarters and she would
12:21:34 11 visit off and on. So whenever she would visit, we would
12:21:37 12 talk.

12:21:37 13 Q. But you did know she was doing her ESGR work out of
12:21:41 14 her real estate office, did you?

12:21:43 15 A. I can't confirm or deny that, sir.

12:21:45 16 Q. Okay. And when you -- in 2007, what was your
12:21:52 17 position?

12:21:52 18 A. I was the army chief vice -- chief of staff, Army.

12:21:57 19 Q. Okay. So there was nothing in your duties that
12:22:00 20 would require you to -- first of all, certainly you
12:22:03 21 weren't supervising the ESGR person, right?

12:22:06 22 A. Was not.

12:22:07 23 Q. Do you know who was supervising the ESGR person?

12:22:10 24 A. I believe the supervision -- I'm not sure who
12:22:16 25 should supervise her, whether it would be the J1 or

12:22:19 1 director of the joint staff.

12:22:20 2 Q. And you also know that this contract position is
12:22:23 3 not hired by the National Guard, correct?

12:22:28 4 A. The National Guard usually is involved in the
12:22:31 5 process by recommending names who might be qualified to
12:22:35 6 hold the position. But ultimately the decision as to
12:22:38 7 who gets the job is made by the contractor assigned at
12:22:46 8 MSP National Guard Bureau.

12:22:49 9 Q. And in Two Thousand- -- you said you came on in
12:22:52 10 January as the director of -- is it --

12:22:55 11 A. The joint staff.

12:22:56 12 Q. The joint staff?

12:22:57 13 A. Yes, sir.

12:22:58 14 Q. Is it January of 2011?

12:23:00 15 A. Yes, sir.

12:23:00 16 Q. Are you sure it wasn't June 2011?

12:23:03 17 A. No, sir.

12:23:03 18 Q. Okay. So what was Colonel Lewis's position in
12:23:07 19 January of 2011?

12:23:12 20 A. Colonel Lewis had been appointed at that point in
12:23:15 21 time by the governor to head the VITEEMA.

12:23:19 22 Q. Right.

12:23:19 23 A. Virgin Islands Territorial Management Agency. And
12:23:24 24 he had also been promoted, I think, to brigadier
12:23:27 25 general. So he was not assistant adjutant general for

12:23:31 1 the organization.

12:23:32 2 Q. And who was your superior?

12:23:34 3 A. At that time my superior was the general himself,
12:23:38 4 which is the adjutant general. I worked directly for
12:23:42 5 adjutant general.

12:23:43 6 Q. Adjutant General Rivera?

12:23:47 7 A. Renaldo Rivera.

12:23:50 8 Q. And when you say you found out that Ms. Morales
12:23:54 9 was -- let me backpedal a little bit. While Ms. Morales
12:23:57 10 was in her military technician position in 2010, Colonel
12:24:04 11 Lewis was her supervisor, correct?

12:24:05 12 A. That's correct.

12:24:06 13 Q. Okay. Now after you found out that she was the
12:24:12 14 ESGR person, you say that you contacted Rivera, correct?

12:24:15 15 A. Contacted both General Rivera and General Lewis by
12:24:20 16 e-mail and asked them were they aware of the fact that
12:24:23 17 she was still in the position, correct.

12:24:24 18 Q. Right. And there was a long delay before they
12:24:30 19 responded to you, wasn't there?

12:24:32 20 A. Correct.

12:24:32 21 Q. And it wasn't till much later that they said:
12:24:40 22 Well, we weren't aware of this. Is that correct?

12:24:42 23 A. Well, I never got a response verbally or in writing
12:24:45 24 from Brigadier General Lewis. At some point in time,
12:24:49 25 later in August, brig- -- Major General Rivera told me

12:24:53 1 he was not --

12:24:55 2 MR. POTTER: Objection.

12:24:56 3 THE WITNESS: -- aware.

12:24:57 4 BY MR. JUPITER:

12:24:57 5 Q. Okay. So how many months after your e-mail that
12:25:00 6 you sent out did you get a response as to whether the
12:25:02 7 general and Colonel Lewis, her supervisor, were aware
12:25:07 8 that she was in that position?

12:25:09 9 A. Originally I asked the question sometime in June,
12:25:12 10 and I didn't really get any type of response, a good
12:25:15 11 response, until about August.

12:25:17 12 Q. And you contacted Baron Hignite over in MPSC,
12:25:24 13 correct?

12:25:24 14 A. Correct.

12:25:25 15 Q. Baron Hignite actually does the hiring for the ESGR
12:25:30 16 position, correct?

12:25:31 17 A. Yes. That I'm aware of, yes.

12:25:34 18 Q. Okay. And Baron Hignite explained to you that
12:25:39 19 he -- explained to you that Mr. Morales was the ESGR
12:25:44 20 person, correct?

12:25:44 21 A. That she was still in the position, correct.

12:25:46 22 Q. All right. And Baron Hignite, you understood that,
12:25:54 23 just like you would have to concur -- or you would be
12:25:57 24 involved in the hiring of the ESGR person, Mr. Hignite
12:26:03 25 would have been involved with the person in your

12:26:07 1 position at the time that she was hired, would have had
12:26:12 2 to consult with that person, right?

12:26:14 3 A. I understand -- I agree with that. That's my
12:26:17 4 understanding.

12:26:18 5 Q. Okay. And so that person would have been her
12:26:22 6 direct supervisor, then Colonel, now General Elton
12:26:28 7 Lewis, right?

12:26:28 8 A. It should have been him, yes.

12:26:37 9 Q. All right.

12:26:38 10 MR. JUPITER: I beg the Court's indulgence?

12:26:40 11 THE COURT: Yes.

12:26:46 12 (Counsel conferring)

12:26:49 13 MR. JUPITER: No further questions, Your Honor.

12:26:50 14 THE COURT: Any redirect?

12:26:51 15 MR. POTTER: No redirect, Your Honor.

12:26:52 16 THE COURT: Mr. Ruan, thank you for your
12:26:56 17 testimony.

12:26:56 18 You may step down.

12:26:56 19 (Witness withdrew from stand.)

12:26:58 20 THE COURT: Next witness.

12:26:59 21 MR. POTTER: Court's indulgence.

12:26:59 22 (Pause.)

12:27:09 23 MR. POTTER: Your Honor, the government calls
12:27:12 24 Kai Schjang.

12:27:45 25 THE CLERK: Please raise your right hand to

12:27:47 1 take the oath.

12:27:48 2 (Witness sworn.)

12:27:50 3 THE WITNESS: I do.

12:27:50 4 THEREUPON, KAI SCHJANG, having been duly sworn,
12:27:51 5 was examined and testified as follows:

12:27:51 6 DIRECT EXAMINATION

12:27:52 7 BY MR. POTTER:

12:27:52 8 Q. Good afternoon, sir.

12:27:53 9 A. Good afternoon.

12:27:53 10 Q. Can you give us your full name for the record,
12:27:55 11 please, and please spell your first and your last name
12:27:58 12 for the court reporter.

12:28:00 13 A. I am Kai Schjang. First name K-a-i, last name
12:28:06 14 Schjang, S-c-h-j-a-n-g.

12:28:10 15 Q. And tell us how you're employed?

12:28:12 16 A. I'm currently employed with the Virgin Islands
12:28:16 17 National Guard.

12:28:21 18 Q. And tell us how long you've been employed with the
12:28:24 19 National Guard?

12:28:24 20 A. I've been with the National Guard for about
12:28:29 21 27 years, working full-time now; AGR, the last 14 or so.

12:28:39 22 Q. And in your present employment, tell us what it is
12:28:43 23 that you do. Currently, what do you do?

12:28:51 24 A. Currently called the G1, that is the director of
12:28:55 25 personnel.

12:28:56 1 MR. POTTER: Court's indulgence, Your Honor?

12:28:58 2 THE COURT: Yes.

12:29:29 3 (Pause)

12:29:29 4 BY MR. POTTER:

12:29:29 5 Q. And, sir, do you know Sherrymae Morales?

12:29:32 6 A. Yes, I do.

12:29:32 7 Q. And how do you know her?

12:29:33 8 A. I know her prior to being in the Guards, just being

12:29:37 9 someone here from the islands. We played in some

12:29:41 10 volleyball leagues and stuff. And then I also, when I

12:29:45 11 came on to work full-time with the Guards, I came on

12:29:48 12 under her. She was the recruiting commander and she

12:29:52 13 brought me on full-time, as like an officer recruiter.

12:29:57 14 Q. And, sir, as part of your current duties are you a

12:30:01 15 records custodian for the National Guard?

12:30:03 16 A. Yes, I am.

12:30:10 17 Q. Now, do you know when the defendant was hired

12:30:12 18 full-time with the National Guard?

12:30:16 19 A. She was hired full-time with the National Guard, to

12:30:22 20 the best of my recollection, I would think it was

12:30:25 21 sometime back in '09, if that's right.

12:30:28 22 Q. Let me draw your attention to 2010, March of 2010.

12:30:32 23 Do you know, with respect to her employment, what if

12:30:35 24 anything happened in March of 2010?

12:30:38 25 A. In March of 2010?

12:30:40 1 Q. Yes.

12:30:42 2 A. I think she's employed at the -- in the -- as a
12:30:56 3 technician, the -- like a, in the G5 plans and strategy
12:31:04 4 position that -- in that area, what we call like a G5.

12:31:09 5 Q. Okay.

12:31:09 6 MR. POTTER: Sir, let me show you what's been
12:31:14 7 marked as Government's Exhibit Number 1.1 for
12:31:22 8 identification.

12:31:28 9 (Government's Exhibit 1.1 marked for
12:31:32 10 identification.)

12:31:32 11 Q. Do you recognize that, sir?

12:31:41 12 A. Yeah. That -- those look like orders appointing
12:31:45 13 her back into the National Guard.

12:31:47 14 Q. When you say "her," who is "her"?

12:31:48 15 A. Ms. Morales.

12:31:49 16 Q. Okay.

12:31:50 17 MR. POTTER: And let me show you, again just
12:31:53 18 briefly, Government's Exhibit 1.2.

12:31:55 19 (Government's Exhibit 1.2 marked for
12:31:55 20 identification.)

12:31:56 21 BY MR. POTTER:

12:31:56 22 Q. And ask you if you recognize Government's
12:31:59 23 Exhibit 1.2?

12:32:03 24 A. Yeah. That is -- those are documents pertaining to
12:32:13 25 full-time technician position.

12:32:19 1

12:32:19 2

(Government's Exhibit 1.3 marked for

12:32:19 3

identification.)

12:32:20 4

BY MR. POTTER:

12:32:20 5

Q. And let me show you Government's Exhibit 1.3.

12:32:30 6

A. Yes, that's a similar document.

12:32:37 7

Q. Who does it relate to?

12:32:38 8

A. This document relates to Mrs. Morales as well.

12:32:38 9

MR. POTTER: And let me show you Government's

12:32:44 10

Exhibit 1.4.

12:32:44 11

(Government's Exhibit 1.4 marked for

12:32:44 12

identification.)

12:32:44 13

BY MR. POTTER:

12:33:00 14

Q. Do you recognize Government's Exhibit 1.4?

12:33:01 15

A. It's a memo from, at the time, Corporal Lewis.

12:33:07 16

Q. Is that related -- related to who?

12:33:12 17

A. Mrs. Morales, once again.

12:33:15 18

(Government's Exhibit 1.5 marked for

12:33:15 19

identification.)

12:33:16 20

BY MR. POTTER:

12:33:16 21

Q. And let me show you Exhibit 1.5.

12:33:26 22

Who is 1.5 related to?

12:33:29 23

A. Major Morales once again, and I guess a memo --

12:33:33 24

this is a memo from myself dealing with technician pay

12:33:39 25

and salary.

12:33:48 1

12:33:48 2

(Government's Exhibit 1.6 marked for

12:33:48 3

identification)

12:33:49 4

BY MR. POTTER:

12:33:49 5

Q. And Government's Exhibit 1.6?

12:33:51 6

A. That's what you call a PD, a position description,

12:33:56 7

and gives you all, what the job entitles are and the job

12:34:02 8

requirements for the position.

12:34:03 9

Q. And what is the position?

12:34:04 10

A. The position on this is stated "management and

12:34:08 11

program analyst."

12:34:14 12

(Government's Exhibit 1.7 marked for

12:34:14 13

identification.)

12:34:14 14

BY MR. POTTER:

12:34:14 15

Q. And then Government's Exhibit 1.7.

12:34:16 16

And tell us what, generally, that is.

12:34:35 17

A. This is -- the top of this is cut off. It's, it's

12:34:44 18

a selection for the position.

12:34:48 19

Q. And who does it relate to?

12:34:54 20

A. This is the position that Mrs. Morales was being

12:35:02 21

considered for.

12:35:07 22

(Government's Exhibit 1.8 marked for

12:35:07 23

identification.)

12:35:07 24

BY MR. POTTER:

12:35:07 25

Q. And Government's Exhibit 1.8?

12:35:15 1 A. That is a resume for Sherrymae Lee Morales.

12:35:23 2 (Government's Exhibit 1.9 marked for
12:35:23 3 identification.)

12:35:23 4 BY MR. POTTER:

12:35:23 5 Q. And Government's Exhibit 1.9?

12:35:40 6 A. This is from a security clearance. It's a memo to
12:35:43 7 the defendant. The subject is --

12:35:49 8 MR. JUPITER: Objection. Objection, Your
12:35:50 9 Honor.

12:35:50 10 THE COURT: Sustained.

12:35:51 11 Next question.

12:35:53 12 (Government's Exhibit 1.10 marked for
12:35:57 13 identification.)

12:35:57 14 BY MR. POTTER:

12:35:57 15 Q. And Government's Exhibit 1 -- 1.10, just generally
12:36:03 16 what this is and who it refers to?

12:36:05 17 A. It's again, orders for defendant --

12:36:17 18 THE COURT: Separation orders.

12:36:19 19 Next question.

12:36:19 20 (Government's Exhibit 1.11 marked for
12:36:19 21 identification.)

12:36:19 22 BY MR. POTTER:

12:36:20 23 Q. And finally -- sorry -- Government's Exhibit 1.11.

12:36:31 24 A. And that is a, we call that a 30-day notice from
12:36:35 25 the technician employment. Once you lost your

12:36:42 1 eligibility, then you get a 30-day notice memorandum.

12:36:47 2 Q. And who is referred to in this exhibit?

12:36:52 3 A. Major Sherrymae Morales.

12:36:59 4 (Government's Exhibit 1.12 marked for
12:36:59 5 identification.)

12:36:59 6 BY MR. POTTER:

12:36:59 7 Q. And Government's Exhibit 1.12, do you know what
12:37:03 8 that is?

12:37:16 9 A. I have a little difficulty seeing. This, it's a
12:37:18 10 little small.

12:37:38 11 Q. Does that help?

12:37:39 12 A. That's the calculation, looks like, for severance
12:37:42 13 pay.

12:37:43 14 (Government's Exhibit 1.13 marked for
12:37:43 15 identification).

12:37:44 16 BY MR. POTTER:

12:37:44 17 Q. And finally, Government's Exhibit 1.13?

12:37:50 18 A. That's a direct deposit signup form.

12:38:15 19 Q. Now, sir, Government's Exhibit 1.1 through
12:38:19 20 Government's Exhibit 1.13, where did these documents
12:38:25 21 originate?

12:38:26 22 A. They would be, they would be a part of the
12:38:30 23 personnel files for the employee, the soldier.

12:38:37 24 Q. Who is the soldier in this case?

12:38:38 25 A. Major Morales.

12:38:41 1 Q. And are these records kept in the regular course of
12:38:45 2 business of the National Guard?

12:38:46 3 A. Yes. They're a part of their records. It would be
12:38:53 4 under HRO section.

12:38:54 5 Q. And are they made at or near the time, from
12:38:57 6 information transmitted from someone with knowledge?

12:39:00 7 A. Yes. Yes, they would.

12:39:02 8 Q. And is it the regular practice of the National
12:39:06 9 Guard to make and maintain these records?

12:39:13 10 A. Yes, it is.

12:39:14 11 MR. POTTER: Your Honor, we move into evidence
12:39:16 12 Government's Exhibit 1.1 through 1.13.

12:39:20 13 THE COURT: Attorney Jupiter?

12:39:23 14 MR. JUPITER: No objection to 1.1, 1.2 and 1.3,
12:39:33 15 Your Honor.

12:39:34 16 THE COURT: All right. 1.1 through 1.13 are
12:39:37 17 admitted.

12:39:38 18 MR. JUPITER: No, no, no, Your Honor. I
12:39:42 19 said --

12:39:42 20 You're asking for 1.1 through 1.13?

12:39:46 21 MR. POTTER: 1.1 through 1.13.

12:39:49 22 MR. JUPITER: No, Your Honor, no objection to
12:39:51 23 1.1, 1.2 and 1.3.

12:39:55 24 THE COURT: Okay.

12:39:56 25 MR. JUPITER: We object to the others.

12:39:58 1 THE COURT: And the government is moving 1.1
12:40:00 2 through 1.13; is that correct?

12:40:02 3 MR. POTTER: Yes, Judge.

12:40:03 4 THE COURT: All right. 1.1 through 1.8, 1.13
12:40:08 5 are admitted.

12:40:14 6 (Government's Exhibit 1.1 through 1.8, and 1.13
12:40:28 7 admitted into evidence.)

12:40:28 8 MR. JUPITER: Your Honor, request permission to
12:40:30 9 make a record as to that objection.

12:40:32 10 THE COURT: Okay. At the break.

12:40:33 11 Go ahead.

12:40:40 12 BY MR. POTTER:

12:40:40 13 Q. Now Colonel Schjang, let me ask you, taking a look
12:40:44 14 at Government's Exhibit 1.1 --

12:40:48 15 MR. POTTER: Can we publish Government's
12:40:51 16 Exhibit 1.1, Your Honor?

12:41:23 17 (Exhibit published.)

12:41:23 18 BY MR. POTTER:

12:41:24 19 Q. Colonel Schjang, tell us what Government's
12:41:26 20 Exhibit 1.1 is.

12:41:27 21 A. This is the orders appointing her as a member of
12:41:33 22 the Virgin Islands National Guard, the grade or rank
12:41:37 23 that the individual will be coming into, the branch and
12:41:40 24 the assignment, like which unit she would belong to.

12:41:56 25 Q. And what's the date -- the effective date of that?

12:41:58 1 A. You see down below the effective date would be
12:42:04 2 23 February 2010.

12:42:06 3 Q. And Government's Exhibit 1.2, tell us what --

12:42:10 4 MR. POTTER: If we can publish 1.2, Your Honor?
12:42:10 5 (Exhibit published.)

12:42:20 6 BY MR. POTTER:

12:42:20 7 Q. And tell us what 1.2, is?

12:42:23 8 A. This is the personnel action where you advertise or
12:42:26 9 you have the positions that are, that the person is
12:42:29 10 intended to go into. It gives you the GS level, the
12:42:34 11 step, which is the level the step would pay, and
12:42:45 12 basically describes the position.

12:42:51 13 Q. Does the exhibit show the salary?

12:42:53 14 A. Yes, it does. It's a little small. Like right
12:43:00 15 above, halfway that -- right below the -- yeah. Yeah,
12:43:06 16 that block. It gives you the position title and the GS
12:43:12 17 level and step, and the base pay.

12:43:16 18 Q. And what was the salary for Sherrymae Morales at
12:43:20 19 that time?

12:43:21 20 A. The base pay is \$64,392.

12:43:28 21 Q. And is there an adjusted pay?

12:43:31 22 A. And that adds in the locality and all of that.
12:43:36 23 Based on the formula they come up with that.

12:43:40 24 Q. And how much was that?

12:43:41 25 A. That's an additional \$3,035.

12:43:44 1 Q. So her total salary was what, sir?

12:43:46 2 A. \$67,327.

12:43:51 3 Q. And let me show you --

12:43:54 4 MR. POTTER: If we can publish --

12:43:57 5 (Exhibit published.)

12:43:57 6 BY MR. POTTER:

12:43:58 7 Q. Government's Exhibit 1.3. And I ask you if you can
12:44:09 8 tell us what that is.

12:44:10 9 A. Okay. I think this is similar to the first one.
12:44:14 10 The first one was for a temporary employment. Now this
12:44:20 11 one is on the same position. This time we're bringing
12:44:33 12 her as an indefinite employee.

12:44:35 13 Q. Was there an increase in pay?

12:44:36 14 A. Excuse me?

12:44:37 15 Q. Was there an increase in pay?

12:44:40 16 A. Well, there was an increase in pay.

12:44:45 17 Q. So what was -- what is the pay?

12:44:51 18 A. Well, from the original was first a step --
12:44:54 19 grade 12, step 3; and this one takes her up to a
12:44:58 20 grade 12, step 10. So you went from basically 67,327 to
12:45:09 21 82,053.

12:45:12 22 Q. And are you able to determine when, how long it
12:45:20 23 took to go from the 67 to the 82?

12:45:26 24 MR. JUPITER: Objection to relevance, Your
12:45:29 25 Honor.

12:45:29 1 THE COURT: Sustained.

12:45:29 2 BY MR. POTTER:

12:45:40 3 Q. Let me show you --

12:45:42 4 MR. POTTER: If I can publish Government's
12:45:43 5 Exhibit 1.4.

12:45:55 6 (Exhibit published.)

12:45:55 7 BY MR. POTTER:

12:45:56 8 Q. And I ask you if you recognize it?

12:45:57 9 A. Yes. It's a memorandum from Colonel Lewis.

12:46:04 10 Q. And do you know what that memorandum is?

12:46:07 11 A. Well, this memorandum is what we got to actually
12:46:12 12 pay her at the step, at the step 10, the GS-11, step 10.

12:46:19 13 Q. And what's the date of that?

12:46:21 14 A. The date on this is 5 March.

12:46:39 15 MR. POTTER: Government's Exhibit 1.5. Can we
12:46:43 16 publish, Judge?

12:46:51 17 (Exhibit published.)

12:46:51 18 BY MR. POTTER:

12:46:51 19 Q. And tell us what that is?

12:46:52 20 A. It's a memorandum from myself, just indicating
12:46:57 21 after reviewing the, going over with my personnel and
12:47:03 22 the staff that is classified to go over this, to
12:47:09 23 determine that she was qualified at the GS-12, step 3.

12:47:28 24 MR. POTTER: And Government's Exhibit 1.6.

12:47:34 25 (Exhibit published.)

12:47:34 1 THE WITNESS: Yeah. This is what we call the
12:47:36 2 PD, position description, the announcement that goes out
12:47:44 3 to -- it gives you the salary range, the personnel that
12:47:49 4 we're looking for, and onto it will give you the basic
12:47:55 5 requirements.

12:48:00 6 BY MR. POTTER:

12:48:00 7 Q. Okay. And this would be the job for -- the
12:48:04 8 description for the position the defendant was getting?

12:48:07 9 A. Correct. The management and program analyst.

12:48:23 10 MR. POTTER: Brief indulgence, Judge?

12:48:27 11 THE COURT: Yes.

12:48:28 12 (Counsel conferring.)

12:48:38 13 BY MR. POTTER:

12:48:38 14 Q. Now, Colonel Schjang, was this a full-time or
12:48:41 15 part-time position? Can you tell?

12:48:45 16 A. This, this is a full-time position.

12:48:54 17 Q. And for the management and program analyst, do you
12:48:56 18 know what the hours of work for that position would be?

12:48:59 19 A. Well, all the positions we have in the Guards, we
12:49:02 20 just have one -- the regular working day, from 8:00 to
12:49:05 21 5:00.

12:49:09 22 Q. And what days of the week?

12:49:10 23 A. Monday through Friday.

12:49:25 24 Q. And Government's Exhibit 1.17 -- 1.7.

12:49:30 25 MR. POTTER: Sorry, Judge.

12:49:42 1 (Exhibit published.)

12:49:42 2 BY MR. POTTER:

12:49:42 3 Q. Tell us what that is.

12:49:43 4 A. This is where the selection, I guess, is made by
12:49:47 5 General Lewis, and signed off on approving by General
12:49:55 6 Rivera.

12:49:55 7 Q. And what's the date of that?

12:49:57 8 A. The date on this is 15 March.

12:50:03 9 Q. And who is the approval for?

12:50:08 10 A. Who is the approval for?

12:50:09 11 Q. For? Who are they approving, and what are they
12:50:12 12 approving?

12:50:13 13 A. I guess they are approving the previous
12:50:16 14 announcement that we saw, Major Morales into the
12:50:22 15 management and program analyst position.

12:50:32 16 MR. POTTER: Government Exhibit 1.8.

12:50:37 17 (Exhibit published.)

12:50:37 18 BY MR. POTTER:

12:50:38 19 Q. And can you tell us what that is?

12:50:40 20 A. That is a resume.

12:50:42 21 Q. Resume of who?

12:50:44 22 A. Sherrymae Morales.

12:50:51 23 Q. And do you know what that resume was for?

12:50:53 24 A. It's part of the package. Once you're applying for
12:50:56 25 the position, you attach your resume that goes along

12:51:01 1 with it.

12:51:06 2 MR. POTTER: And Government's Exhibit 1.9.

12:51:11 3 MR. JUPITER: Request permission to approach,
12:51:13 4 Your Honor.

12:51:14 5 THE COURT: Those two -- 1.9 and 1.10 are under
12:51:21 6 advisement.

12:51:22 7 (Government's Exhibits 1.9, 1.10, 1.11, 1.12, under
12:51:32 8 advisement.)

12:51:37 9 MR. POTTER: Okay, Judge.

12:51:38 10 BY MR. POTTER:

12:51:38 11 Q. Let me show you Government's Exhibit 1.13.

12:51:38 12 (Exhibit published.)

12:51:55 13 BY MR. POTTER:

12:51:55 14 Q. And can you tell us what that is?

12:51:57 15 A. That is the standard direct deposit signup form.
12:52:01 16 This one's specifically for Sherrymae Morales.

12:52:04 17 Q. And what's the purpose of this form?

12:52:06 18 A. Everyone in the National Guard signs up for a
12:52:08 19 direct deposit. That's how you get paid. We no longer
12:52:11 20 issue checks straight to individuals. Everything is
12:52:14 21 direct deposit.

12:52:22 22 MR. POTTER: Thank you.

12:52:24 23 Court's indulgence, Your Honor.

12:52:25 24 THE COURT: Yes.

12:52:25 25 (Pause.)

12:52:25 1 BY MR. POTTER:

12:52:37 2 Q. Now, Colonel Schjang, do you -- in 2010, what, if
12:52:45 3 any, knowledge did you have regarding the defendant
12:52:52 4 being a contract employee for the ESGR?

12:52:59 5 A. I know she was in that position previously. But
12:53:01 6 the length of time --

12:53:03 7 MR. JUPITER: Objection. It's nonresponsive,
12:53:06 8 Your Honor.

12:53:07 9 THE COURT: Okay. Overruled.

12:53:14 10 MR. POTTER: Can I have the witness repeat,
12:53:19 11 Judge?

12:53:19 12 THE COURT: Rephrase your question.

12:53:21 13 BY MR. POTTER:

12:53:21 14 Q. Other than the defendant being a full-time military
12:53:28 15 tech employee with the National Guard, do you know of
12:53:31 16 any other employment that she had related to the Guard?

12:53:38 17 A. At that same time, no.

12:53:54 18 Q. Now, let's go back briefly to Government's
12:53:58 19 Exhibit 1.8. Now looking that exhibit, does -- anywhere
12:54:18 20 on the exhibit, does the defendant indicate that she was
12:54:20 21 a full-time employee with the ESGR when she applied for
12:54:24 22 the military tech position?

12:54:36 23 MR. POTTER: Can we publish, please?

12:54:48 24 THE WITNESS: I'm not seeing it mentioned any
12:54:50 25 place here.

12:54:58 1 MR. POTTER: No further questions of the
12:54:59 2 witness, Your Honor.

12:55:00 3 THE COURT: Attorney Jupiter.

12:55:22 4 CROSS-EXAMINATION

12:55:22 5 BY MR. JUPITER:

12:55:25 6 Q. Good afternoon.

12:55:26 7 A. Good afternoon.

12:55:26 8 Q. You indicated that -- you just saw Mrs. Morales's
12:55:31 9 resume, correct?

12:55:35 10 A. Correct.

12:55:35 11 Q. You weren't going to be the one who would be
12:55:38 12 deciding who was going to fill this position, correct?

12:55:41 13 A. Correct.

12:55:41 14 Q. Colonel Lewis was going to be the one deciding who
12:55:44 15 was going to fill the position?

12:55:46 16 A. He was the selecting individual, correct.

12:55:48 17 Q. And this resume would have been submitted prior to
12:55:50 18 employment in the position; is that correct?

12:55:53 19 A. Prior to employment?

12:55:55 20 Q. Prior to Ms. Morales being employed in the military
12:56:01 21 tech position, the resume would have been submitted
12:56:03 22 prior to employment, right?

12:56:08 23 A. Correct.

12:56:09 24 Q. All right. And prior to her taking the military
12:56:12 25 tech position, do you know who the ESGR person was?

12:56:16 1 A. No, I wasn't tracking who that person is, no.

12:56:22 2 Q. You didn't know who the ESGR position was in -- who
12:56:27 3 held the ESGR position in 2010, right?

12:56:31 4 A. I know we had a number of them. But for, when one
12:56:35 5 start to when another one took over, at the HR level, I
12:56:41 6 didn't track the contractors in that position, no.

12:56:43 7 Q. So you're saying you never knew Ms. Morales to have
12:56:46 8 the ESGR position?

12:56:48 9 A. Yes, at one point I knew she was.

12:56:51 10 Q. You knew she had the position before she took --
12:56:53 11 in -- you knew she had the position in 2010, didn't you?

12:57:00 12 A. I said the dates, exact dates, I don't keep that to
12:57:06 13 memory. I know she was one. Emmett Hansen was one.

12:57:10 14 Q. You were not an ESGR volunteer, were you not?

12:57:15 15 A. No.

12:57:16 16 Q. You didn't supervise anyone who was on the ESGR
12:57:19 17 contract?

12:57:20 18 A. No.

12:57:20 19 Q. You didn't go to ESGR events to support the
12:57:26 20 Guardsmen?

12:57:26 21 A. No.

12:57:27 22 Q. You didn't.

12:57:28 23 For instance, like the yellow ribbon ceremony,
12:57:31 24 you're familiar with those?

12:57:31 25 A. Yes, I am.

12:57:32 1 Q. And those ceremonies are designed when people are
12:57:35 2 coming back from deployment, right?

12:57:36 3 A. Correct.

12:57:37 4 Q. So you go there, you have a ceremony and try to,
12:57:40 5 you know, give some support to the people coming back,
12:57:42 6 right?

12:57:43 7 A. Correct.

12:57:44 8 Q. You never attended those, did you?

12:57:47 9 A. Very infrequently. Not often, no.

12:57:51 10 Q. Okay. And you never saw Mrs. Morales presiding at
12:57:56 11 any of those ceremonies, did you?

12:57:57 12 A. Yes, I'm sure she was -- I know she was the ESGR at
12:58:02 13 one point.

12:58:04 14 Q. Okay. So in terms of when she was applying for
12:58:06 15 this job, you knew she was -- you knew her experience
12:58:10 16 with ESGR, didn't you?

12:58:15 17 A. I know she was in that position. She had that
12:58:18 18 position, yes.

12:58:18 19 Q. Right. She was applying to the Guard with people
12:58:20 20 like you, who already knew she had that qualifications,
12:58:23 21 didn't she? Wasn't she?

12:58:25 22 A. Yes, she was.

12:58:27 23 Q. Okay. General Lewis and everyone else would have
12:58:30 24 seen her as ESGR person, right?

12:58:33 25 MR. POTTER: Objection, Judge.

12:58:34 1 THE COURT: Sustained.

12:58:39 2 BY MR. JUPITER:

12:58:39 3 Q. And with regard to her position or what she was
12:58:41 4 going to be doing as military technician, GS-5, right?

12:58:48 5 A. Correct.

12:58:49 6 Q. It's completely what she does with ESGR, isn't it?

12:58:53 7 A. Correct.

12:59:12 8 MR. JUPITER: No further questions, Your Honor.

12:59:13 9 THE COURT: Any redirect?

12:59:14 10 MR. POTTER: Yes, Judge.

12:59:15 11 REDIRECT EXAMINATION

12:59:16 12 BY MR. POTTER:

12:59:17 13 Q. Now, Colonel Schjang, could -- would the National
12:59:22 14 Guard hire someone as a military tech, knowing that they
12:59:27 15 were employed somewhere else full-time?

12:59:29 16 MR. JUPITER: Objection, Your Honor.

12:59:30 17 THE COURT: Sustained.

12:59:42 18 BY MR. POTTER:

12:59:42 19 Q. As a full-time military technician, are you
12:59:46 20 permitted to hold a second full-time job --

12:59:52 21 MR. JUPITER: Objection, Your Honor.

12:59:53 22 THE COURT: Sustained.

13:00:00 23 BY MR. POTTER:

13:00:00 24 Q. What prohibitions, if any, are there for individual
13:00:05 25 full-time Guard members holding other full-time jobs?

13:00:14 1 MR. JUPITER: Objection, Your Honor.

13:00:16 2 THE COURT: All right. Sustained. 403.

13:00:31 3 BY MR. POTTER:

13:00:31 4 Q. When Mrs. Morales was hired as a full-time military
13:00:37 5 tech, did you know -- as the HRO, also know she was a
13:00:42 6 full-time contract employee for ESGR?

13:00:45 7 MR. JUPITER: Objection, asking questions --
13:00:47 8 facts not in evidence.

13:00:48 9 THE COURT: Okay. Overruled.

13:00:52 10 MR. POTTER: You can answer.

13:00:53 11 THE WITNESS: I can answer that?

13:00:55 12 Once -- you would have to say it again, please?

13:01:11 13 MR. POTTER: Your Honor, can I have the court
13:01:13 14 reporter please read back?

13:01:14 15 THE COURT: No.

13:01:19 16 BY MR. POTTER:

13:01:19 17 Q. If someone is hired as a full-time military tech,
13:01:23 18 you as the HRO, with your knowledge as being an HRO, can
13:01:36 19 that employee also hold another full-time position with
13:01:44 20 the Guard?

13:01:44 21 MR. JUPITER: Objection, Your Honor.

13:01:45 22 THE COURT: Sustained.

13:01:46 23 BY MR. POTTER:

13:01:46 24 Q. Did you know, as the HRO, when Mrs. Morales came on
13:01:54 25 as a full-time military tech, did you have any personal

13:01:57 1 knowledge that she was also a full-time ESGR contract
13:02:03 2 employee?

13:02:03 3 A. No, I did not.

13:02:09 4 Q. And if you had learned that when she was hired as a
13:02:14 5 full-time military tech that she was also a full-time
13:02:18 6 ESGR contract employee, you as the HRO, what would you
13:02:23 7 have done?

13:02:24 8 MR. JUPITER: Objection, Your Honor.

13:02:25 9 THE COURT: Sustained.

13:02:30 10 Anything else for this witness?

13:02:32 11 MR. POTTER: No, Judge. Thank you.

13:02:33 12 THE COURT: All right.

13:02:34 13 Colonel Schjang, thank you for your testimony.

13:02:35 14 You may step down.

13:02:35 15 (Witness withdrew from stand.)

13:02:37 16 THE COURT: Ladies and gentlemen, it is time
13:02:38 17 for lunch.

13:02:39 18 We're going to take a 45-minute break, then we'll
13:02:42 19 resume with the trial.

13:03:40 20 (Jury not present.)

13:03:42 21 THE COURT: All right, Counsel, we're going to
13:03:44 22 take a 45-minute lunch break. Then we'll resume.

13:03:47 23 Anything we need to tend to before we resume?

13:03:50 24 Attorney Potter?

13:03:51 25 MR. POTTER: Nothing, Judge.

13:03:52 1 THE COURT: Attorney Jupiter?

13:03:53 2 MR. JUPITER: No, Your Honor.

13:03:54 3 THE COURT: Okay. Enjoy your lunch.

13:04:20 4 (Court in recess, 1:04 p.m.)

14:12:45 5 (After recess, 2:12 p.m., jury not present).

14:12:48 6 MR. JUPITER: Your Honor?

14:12:50 7 THE COURT: Yes.

14:12:51 8 MR. JUPITER: If the Court has not done so, I
14:12:52 9 would ask for sequestration of witnesses.

14:12:55 10 (Witness sequestration rule invoked.)

14:12:55 11 THE COURT: All right. The government knows
14:12:57 12 the rule.

14:12:57 13 MR. POTTER: Yes, Judge.

14:12:58 14 THE COURT: All right.

14:13:43 15 (Jury present.)

14:13:44 16 THE COURT: Good afternoon, ladies and
14:13:46 17 gentlemen.

14:13:46 18 We're still in the government's case-in-chief.

14:13:48 19 Attorney Potter, are you ready to proceed?

14:13:51 20 MR. POTTER: Yes, Judge.

14:13:52 21 THE COURT: Go right ahead.

14:13:54 22 MR. POTTER: The government calls Colonel
14:13:56 23 Jacqueline (sic) Cills.

14:14:23 24 THE CLERK: Please stand and raise your right
14:14:24 25 hand to take the oath.

14:14:26 1 (Witness sworn.)

14:14:29 2 THE WITNESS: I do.

14:14:31 3 THEREUPON, LINDA A. CILLS, having been duly
14:14:32 4 sworn, was examined and testified as follows:

14:14:32 5 DIRECT EXAMINATION

14:14:34 6 BY MR. POTTER:

14:14:40 7 Q. Good afternoon.

14:14:41 8 A. Good afternoon.

14:14:43 9 Q. Can you please give us your full name?

14:14:45 10 A. Linda Agatha Cills.

14:14:48 11 Q. And spell your first and your last name for the
14:14:50 12 court reporter.

14:14:50 13 A. L-i-n-d-a, C-i-l-l-s.

14:14:58 14 Q. And Colonel Cills -- are you a colonel?

14:15:01 15 A. Yes.

14:15:01 16 Q. Tell us how you are employed.

14:15:04 17 A. How?

14:15:04 18 Q. How you are employed? Who do you work for?

14:15:07 19 A. Right now I work for the Army National Guard. I
14:15:10 20 serve as the chief of staff.

14:15:11 21 Q. And how long have you been the chief of staff?

14:15:13 22 A. I started in January of 2012.

14:15:22 23 Q. And prior to your being the chief of staff, what
14:15:25 24 other positions have you held in the National Guard?

14:15:27 25 A. Prior to that, I served as the deputy chief of

14:15:33 1 staff of personnel from 2003 until the summer of 2010.
14:15:37 2 And then I came back to that same job in 2010, until I
14:15:42 3 became the chief of staff.

14:15:47 4 Q. And tell us what a chief of staff does?

14:15:49 5 A. Basically, the position oversees the day-to-day
14:15:55 6 operation on behalf of the adjutant general, oversees
14:15:59 7 the staff, ensure that things are running, and I provide
14:16:12 8 advice to the adjutant general.

14:16:18 9 Q. On all issues or just specific issues?

14:16:22 10 A. I wouldn't say all issues, because he has other
14:16:26 11 persons on his personal staff; but the day-to-day
14:16:28 12 operations.

14:16:34 13 Q. Do you supervise?

14:16:37 14 A. Yes. I supervise what we call the general staff.
14:16:40 15 I have a deputy chief of staff for personnel,
14:16:44 16 operations, logistics, finance. I also oversee the
14:16:51 17 Human Resources Office and the Facilities Management
14:16:53 18 Office.

14:16:53 19 Q. And did you also say you were deputy chief of
14:16:57 20 personnel?

14:16:57 21 A. Deputy chief of staff of personnel.

14:17:00 22 Q. Okay. And what does the deputy chief of staff of
14:17:03 23 personnel do?

14:17:04 24 A. That individual is responsible for overseeing the
14:17:08 25 Military Personnel Office. They're responsible for

14:17:09 1 overall personnel readiness of the force.

14:17:14 2 Q. And are you familiar with the position of the human
14:17:17 3 resource officer, HRO?

14:17:19 4 A. Yes.

14:17:19 5 Q. Have you ever served in that position?

14:17:21 6 A. No, I have not.

14:17:22 7 Q. Do you supervise that position?

14:17:24 8 A. Right now I do, in my capacity as the chief of
14:17:27 9 staff.

14:17:28 10 Q. And what does the HRO or human resource officer do?

14:17:32 11 A. The human resource officer --

14:17:35 12 MR. JUPITER: Objection, Your Honor.

14:17:36 13 THE COURT: Overruled.

14:17:40 14 BY MR. POTTER:

14:17:41 15 Q. Continue.

14:17:41 16 A. You want me to answer the question?

14:17:42 17 Q. Yes.

14:17:43 18 A. The Human Resource Office is responsible for the
14:17:45 19 full-time force. They do all of the hiring, all of the
14:17:48 20 processing of any actions for the staff, all the way
14:17:51 21 from hiring until termination and anything in between.

14:17:57 22 Q. Do you have supervision over military technicians,
14:18:03 23 military tech?

14:18:05 24 A. At the moment --

14:18:06 25 Q. What we call GS tech?

14:18:10 1 A. If I have supervision over any?

14:18:12 2 Q. Yes.

14:18:12 3 A. Currently, I have some that report to me directly.

14:18:15 4 Q. And what are the standard hours of work?

14:18:17 5 A. Their working hours are Monday to Friday, 8:00 to
14:18:20 6 5:00.

14:18:23 7 Q. And is that the standard working hours for all
14:18:27 8 full-time members of the Guard, or is that just for
14:18:31 9 military?

14:18:34 10 A. I would say yes, it is. There are times persons
14:18:39 11 would work beyond 5:00, but generally our hours are
14:18:44 12 Monday to Friday, 8:00 to 5:00.

14:18:47 13 Q. And if individuals under your command have to work
14:18:52 14 weekly -- or beyond 8:00 to 5:00, what is the protocol?

14:18:57 15 A. There are different status that individuals would
14:19:00 16 fall under. They could be working on a weekend on a
14:19:03 17 different status, for example, on military orders. They
14:19:08 18 could be in a drill status. They could be doing annual
14:19:15 19 training. But generally, for the technician force if
14:19:18 20 they're working after hours, they usually work what we
14:19:20 21 call compensatory time.

14:19:28 22 Q. And under your command, is it ever authorized to
14:19:33 23 work two full-time jobs within the same 8:00 to 5:00
14:19:39 24 time period?

14:19:39 25 MR. JUPITER: Objection, Your Honor.

14:19:40 1 Irrelevant.

14:19:42 2 THE COURT: Sustained.

14:19:54 3 BY MR. POTTER:

14:19:54 4 Q. Do you know Sherrymae Morales?

14:19:59 5 A. Yes, I do.

14:20:00 6 Q. And tell us how you know her.

14:20:01 7 A. She was previously a member of the Army National
14:20:05 8 Guard.

14:20:05 9 Q. Do you know when she left the National Guard?

14:20:11 10 A. Around April of 2010.

14:20:19 11 Q. That's when she left the National Guard?

14:20:21 12 A. That's my recollection, yes, '10 or '11.

14:20:31 13 Q. Are you familiar with any contract position that
14:20:33 14 the defendant had with the National Guard?

14:20:36 15 A. She served as the ESGR coordinator, I think that's
14:20:42 16 the title of the position, the executive director for
14:20:46 17 ESGR.

14:20:46 18 Q. And do you recall when that was, approximately?

14:20:48 19 A. When she started?

14:20:49 20 Q. Yes.

14:20:50 21 A. I believe it was in 2007.

14:20:55 22 Q. And do you know when she left that position?

14:20:59 23 A. I can't say for sure.

14:21:07 24 MR. POTTER: The Court's indulgence?

14:21:27 25 Let me show you what has been marked as

14:21:38 1 Government's Exhibit Number 1.10 for identification
14:21:52 2 purposes.

14:22:02 3 BY MR. POTTER:

14:22:02 4 Q. Do you see that document on your screen?

14:22:09 5 A. No, I do not. There's nothing there.

14:22:17 6 Q. Do you see it now?

14:22:18 7 A. Yes.

14:22:19 8 Q. Can you tell us what Government's Exhibit 1.10 is?

14:22:26 9 A. It's a military order separating Mrs. Morales, and
14:22:31 10 it's dated April of 2011.

14:22:34 11 Q. And does your signature appear on that document?

14:22:38 12 A. It does, in the signature block.

14:22:48 13 Q. And is this document kept in the regular course of
14:22:51 14 business at the Virgin Islands National Guard?

14:22:52 15 A. If it's -- I'm sorry?

14:22:54 16 Q. Kept in the regular course of business at the
14:22:57 17 Virgin Islands National Guard?

14:22:59 18 A. It's an electronic document that can be downloaded
14:23:02 19 at any time, yes.

14:23:07 20 MR. POTTER: Your Honor, we move to admit
14:23:08 21 Government's Exhibit 1.10.

14:23:18 22 MR. JUPITER: Your Honor, we object. No
14:23:22 23 foundation.

14:23:23 24 THE COURT: Okay. It's under advisement.

14:23:31 25 BY MR. POTTER:

14:23:31 1 Q. Is it the practice of the Virgin Islands National
14:23:34 2 Guard to create such documents?

14:23:37 3 A. Yes.

14:23:39 4 Q. And are such documents kept in the regular course
14:23:42 5 of business --

14:23:42 6 A. Yes.

14:23:42 7 Q. -- of the Virgin Islands National Guard?

14:23:44 8 A. Yes.

14:23:47 9 Q. And are the documents created at or near a time by
14:23:50 10 someone with knowledge as to the information contained
14:23:54 11 in the document?

14:23:55 12 A. Yes.

14:24:00 13 Q. And who you recognize Government's Exhibit 1.10 as
14:24:08 14 relating to?

14:24:09 15 A. If I recognize it as --

14:24:11 16 Q. Who it's relating to?

14:24:13 17 A. Yes.

14:24:14 18 Q. And who is that person?

14:24:15 19 A. It's the separation order for Major Morales.

14:24:20 20 MR. POTTER: Your Honor, I again move for the
14:24:21 21 admission of Government's Exhibit 1.10.

14:24:33 22 MR. JUPITER: We object again under 403, Your
14:24:36 23 Honor.

14:24:36 24 THE COURT: Okay. It's under advisement.

14:24:38 25 BY MR. POTTER:

14:24:38 1 Q. Now, in 2007, do you know what position the
14:24:41 2 defendant held?

14:24:44 3 A. I believe that's when she started as the executive
14:24:47 4 director for ESGR.

14:24:49 5 Q. And did you then have any working relationship with
14:24:55 6 the defendant in her ESGR capacity?

14:24:58 7 A. In my capacity as the deputy chief of staff for
14:25:01 8 personnel, I was assigned as the program manager for a
14:25:05 9 little over 20 accounts, of which ESGR was one. And so
14:25:10 10 our communication was -- we communicated to ensure that
14:25:12 11 the funds were expended.

14:25:18 12 Q. And how, generally, would you communicate with the
14:25:21 13 defendant?

14:25:23 14 A. Generally via e-mail.

14:25:32 15 Q. And the ESGR, you said you had some level of
14:25:43 16 knowledge of the ESGR contract?

14:25:47 17 A. Generally, I know what the position is supposed to
14:25:49 18 do. Each state and territory has one. They are tasked
14:25:52 19 with providing a service to service members in the event
14:25:56 20 they are having challenges with their employers for
14:26:00 21 military service, and also to educate employers on the
14:26:03 22 program and to build a core of volunteers.

14:26:11 23 Q. So the ESGR volunteer is different than the ESGR
14:26:18 24 contract person?

14:26:19 25 A. Repeat your question.

14:26:20 1 Q. You mentioned that the position builds a core of
14:26:29 2 ESGR volunteers. The function of the ESGR volunteer,
14:26:35 3 can you compare that function to the ESGR contractor?

14:26:48 4 A. It would be difficult for me to differentiate,
14:26:50 5 other than the fact that the full-time person is in
14:26:53 6 charge of overseeing the program to make sure that it
14:26:56 7 runs -- it's effective, that they have an effective
14:26:59 8 core, that the training is done, and that funds sent by
14:27:04 9 ESGR is expended.

14:27:07 10 Q. Now, did there ever come a time that the defendant
14:27:15 11 was hired back as a full-time National Guard employee?

14:27:25 12 A. Yes.

14:27:25 13 Q. Do you know when that would have been,
14:27:26 14 approximately?

14:27:26 15 A. I think I got my years mixed up before.
14:27:33 16 Around March of 2010.

14:27:41 17 Q. Now in March of 2010, when the defendant was hired
14:27:47 18 on as the military tech, do you have any knowledge what
14:27:52 19 happened to her ESGR contract position?

14:27:55 20 A. No, I do not.

14:28:08 21 Q. As someone -- if Mrs. Morales was hired as a
14:28:16 22 full-time military tech person, would she have been
14:28:20 23 permitted to remain on as a full-time ESGR person?

14:28:26 24 MR. JUPITER: Objection, Your Honor.

14:28:27 25 THE COURT: Sustained.

14:28:27 1 THE WITNESS: Can I answer?

14:28:29 2 THE COURT: No.

14:28:30 3 THE WITNESS: Okay.

14:28:32 4 BY MR. POTTER:

14:28:32 5 Q. Are you aware whether or not, when Mrs. Morales was
14:28:38 6 hired as the military tech person, whether or not she
14:28:45 7 resigned her position with ESGR?

14:28:49 8 A. I have no knowledge.

14:28:56 9 Q. Did you have any conversation or communication with
14:29:02 10 Mrs. Morales regarding her -- once she came on board as
14:29:08 11 a military tech, regarding her ESGR contract position?

14:29:14 12 A. I, at some point, make -- in communicating with
14:29:18 13 her, asked that she pass on the name of the person who
14:29:21 14 would be replacing her, so I could communicate with that
14:29:23 15 person to ensure that the remaining funds were expended.

14:29:28 16 Q. You said you asked her to pass on the name of the
14:29:30 17 person who was replacing her. Why were you assuming
14:29:35 18 that she would be replaced?

14:29:36 19 MR. JUPITER: Objection, Your Honor.

14:29:37 20 THE COURT: Sustained.

14:29:40 21 BY MR. POTTER:

14:29:40 22 Q. Why did you ask her --

14:29:44 23 MR. JUPITER: Same objection, Your Honor.

14:29:46 24 THE COURT: Overruled. Let me hear the
14:29:48 25 question.

14:29:48 1 BY MR. POTTER:

14:29:48 2 Q. Why did you ask her to give you the name of her
14:29:52 3 replacement?

14:29:53 4 MR. JUPITER: Same objection, Your Honor.

14:29:54 5 THE COURT: Overruled.

14:29:57 6 THE WITNESS: Answer?

14:29:58 7 THE COURT: Yes.

14:29:59 8 THE WITNESS: I asked because the assumption
14:30:01 9 was the position was vacated.

14:30:06 10 MR. JUPITER: Objection. Move to strike, Your
14:30:10 11 Honor. It's opinion.

14:30:12 12 THE COURT: Overruled.

14:30:12 13 BY MR. POTTER:

14:30:13 14 Q. Now, did you have any communication with
14:30:18 15 Mrs. Morales regarding whether or not she was still
14:30:23 16 remaining in her ESGR position once she came on -- once
14:30:28 17 she was hired on board as the military tech?

14:30:31 18 THE COURT: No, don't answer that.

14:30:33 19 Rephrase your question. You're leading this
14:30:36 20 witness.

14:30:38 21 MR. POTTER: Okay, Judge.

14:30:39 22 THE COURT: It's your witness.

14:30:47 23 BY MR. POTTER:

14:30:47 24 Q. What, if any, communication did you have with
14:30:53 25 Mrs. Morales regarding her ESGR contract position?

14:30:59 1 A. After she came on board?

14:31:06 2 Q. Yes.

14:31:06 3 A. As I indicated, at some point in our communication
14:31:09 4 I asked to get the name of the replacement so we could
14:31:12 5 communicate on ensuring that the remaining funds were
14:31:14 6 fully expended.

14:31:16 7 Q. And how did you make that communication to her?

14:31:19 8 A. Via -- it was via e-mail.

14:31:21 9 MR. POTTER: Let me show you what's been marked
14:31:24 10 as Government's Exhibit 10 for identification purposes.

14:31:36 11 (Government's Exhibit 10 marked for
14:31:36 12 identification.)

14:31:36 13 BY MR. POTTER:

14:31:37 14 Q. And ask if you recognize it.

14:31:37 15 A. Yes.

14:31:38 16 Q. And tell us what Government's Exhibit 10 is?

14:31:42 17 A. It is an e-mail sent by me on 12 April of 2010 to
14:31:51 18 Mrs. Morales, cc Carl Lewis, and a response back from
14:32:01 19 her on the same day.

14:32:02 20 Q. And this particular e-mail, Government's
14:32:06 21 Exhibit 10, why did you send her this e-mail?

14:32:08 22 A. Why?

14:32:09 23 Q. Yes.

14:32:10 24 A. We were communicating on, on the budget that was
14:32:16 25 remaining, some supplies that she wanted purchased, and,

14:32:23 1 again, for me to find out who the replacement was.

14:32:27 2 Q. And is Government's Exhibit Number 10 a fair and
14:32:32 3 accurate representation of the e-mail that you --

14:32:35 4 A. Yes.

14:32:35 5 Q. -- the e-mail traffic that you had with
14:32:38 6 Mrs. Morales?

14:32:38 7 A. Yes.

14:32:44 8 Q. Do you see any evidence that that has been modified
14:32:46 9 or altered in any way?

14:32:48 10 A. No.

14:32:48 11 MR. POTTER: Your Honor, we move to admit
14:32:50 12 Government's Exhibit Number 10.

14:32:54 13 MR. JUPITER: No objection, Your Honor.

14:32:56 14 THE COURT: All right. Ten is admitted.

14:33:01 15 (Government's Exhibit 10 admitted into evidence.)

14:33:02 16 MR. POTTER: Can I publish, Your Honor?

14:33:03 17 THE COURT: Yes.

14:33:26 18 (Exhibit published.)

14:33:26 19 BY MR. POTTER:

14:33:27 20 Q. Colonel Cills, I'm going to ask you to read the
14:33:33 21 e-mail that you sent to Mrs. Morales, and then I'll ask
14:33:39 22 you to read her reply.

14:33:45 23 A. The e-mail reads:

14:33:46 24 Mrs. Morales,

14:33:47 25 I know that you are no longer the ESGR

14:33:50 1 coordinator, but we have a budget of \$8,000 to
14:33:53 2 spend for FY-10, and zero has been expended to
14:33:57 3 date. The income software will be purchased
14:34:00 4 once DF3953 are approved through channels.

14:34:04 5 Please advise if the luncheon is still a
14:34:07 6 go, and whether there's any plans for staff or
14:34:09 7 volunteer training.

14:34:09 8 If you can pass on the ESGR assistant
14:34:14 9 and/or the replacement, that would be helpful
14:34:16 10 as well. Thanks.

14:34:17 11 Q. And how did Mrs. Morales respond?

14:34:18 12 A. The response reads:

14:34:21 13 Colonel Cills,

14:34:22 14 Last I knew we had \$3,000. When did we
14:34:25 15 get an additional \$5,000?

14:34:27 16 The award ceremony is still on. We were
14:34:29 17 waiting on a date from Tang. He finally gave
14:34:33 18 the date 23, April 10, so we're trying to work
14:34:36 19 with that. We'll let you know where it ends
14:34:38 20 up, but we'll be adding more names than the 75
14:34:41 21 people initially planned for.

14:34:42 22 As far as ESGR, I will be staying on in a
14:34:46 23 volunteer capacity as the executive director.
14:34:48 24 Baron asked me to expend as much funds as I
14:34:50 25 can so that VING's allotment remains the same

14:34:54 1 for FY-2011. We were to expend some moneys on
14:34:58 2 the GITMO trip, but that was canceled. I will
14:35:02 3 reassess and talk to the state chair and let
14:35:04 4 you know.

14:35:04 5 Major Morales.

14:35:06 6 Q. After Ms. Morales responded to your e-mail, what
14:35:12 7 conclusions, if any, did you make with respect to her
14:35:19 8 position as the ESGR coordinator?

14:35:23 9 MR. JUPITER: Objection, Your Honor. Opinion.

14:35:27 10 THE COURT: Okay. Overruled.

14:35:28 11 THE WITNESS: I can answer?

14:35:29 12 MR. POTTER: Yes.

14:35:30 13 THE WITNESS: What conclusions did I come to?

14:35:32 14 That she would be staying on in a voluntary capacity.

14:35:36 15 BY MR. POTTER:

14:35:36 16 Q. Now as an ESGR volunteer, is a volunteer paid or
14:35:41 17 unpaid?

14:35:42 18 A. Volunteers are unpaid.

14:35:45 19 Q. The ESGR coordinator, is that paid or unpaid?

14:35:49 20 A. That's a paid position.

14:36:00 21 Q. Now, any time after April of 2010 when this e-mail
14:36:06 22 was written, did you have any knowledge that
14:36:16 23 Mrs. Morales returned?

14:36:17 24 A. No, I did not.

14:36:22 25 Q. Based on -- based on the --

14:36:22 1 (Simultaneous discussion.)

14:36:24 2 MR. POTTER: Well, let me finish my question.

14:36:28 3 THE WITNESS: Oh, I'm sorry.

14:36:28 4 BY MR. POTTER:

14:36:28 5 Q. Did you have any knowledge that Mrs. Morales
14:36:34 6 returned to the ESGR position as a paid employee?

14:36:38 7 A. No, I did not.

14:36:45 8 Q. Did you have any conversation with anyone within
14:36:49 9 the Guard -- let's just say management within the Guard,
14:36:55 10 that Mrs. Morales had returned to the ESGR as a paid
14:37:03 11 contractor?

14:37:05 12 MR. JUPITER: Object to leading, Your Honor.

14:37:07 13 THE COURT: Sustained.

14:37:07 14 BY MR. POTTER:

14:37:08 15 Q. What, if any, conversation did you have with
14:37:12 16 members -- with management of the Guard that
14:37:16 17 Mrs. Morales had returned as a paid employee?

14:37:18 18 MR. JUPITER: Object to leading, Your Honor.

14:37:20 19 THE COURT: Sustained.

14:37:24 20 BY MR. POTTER:

14:37:24 21 Q. Did you have any conversations with members --
14:37:26 22 what, if any, conversations did you have with any member
14:37:29 23 of the Guard regarding Mrs. Morales's association with
14:37:37 24 ESGR?

14:37:37 25 MR. JUPITER: Same objection, Your Honor.

14:37:38 1 THE COURT: All right. Sustained.

14:37:41 2 MR. POTTER: Okay. Thank you, Judge.

14:37:52 3

14:37:52 4 BY MR. POTTER:

14:37:52 5 Q. Do you know when Mrs. Morales left the Guard? Left
14:38:01 6 her military tech position?

14:38:08 7 A. I'm getting my years mixed up. 2011.

14:38:21 8 Q. And you say back in 2011, you would have been the
14:38:25 9 deputy chief of staff?

14:38:26 10 A. In 2011, I was the deputy chief of staff of
14:38:30 11 personnel, yes.

14:38:31 12 Q. And as the deputy chief of staff for personnel, do
14:38:36 13 you know why Mrs. Morales -- do you know under what
14:38:42 14 circumstances Mrs. Morales left the Guard?

14:38:45 15 MR. JUPITER: Objection, Your Honor.

14:38:46 16 Relevance, as well as it's speculation and hearsay.

14:38:52 17 THE COURT: All right. Overruled.

14:38:56 18 THE WITNESS: Oh, answer?

14:38:59 19 Mrs. Morales was separated because she did not
14:39:02 20 meet --

14:39:03 21 THE COURT: Hold on one second. Hold on one
14:39:05 22 second.

14:39:06 23 Ask your next question.

14:39:08 24 MR. POTTER: Can we come to sidebar, Judge?

14:39:10 25 THE COURT: Not yet. Thank you.

14:39:12 1 Next question.

14:39:12 2 BY MR. POTTER:

14:39:25 3 Q. Colonel Cills, do you know when it was that
14:39:30 4 Mrs. Morales left the Guard?

14:39:31 5 MR. JUPITER: Objection. Asked and answered.

14:39:33 6 THE COURT: Sustained.

14:39:36 7 MR. POTTER: Court's indulgence, Judge.

14:39:37 8 THE COURT: Yes.

14:40:25 9 BY MR. POTTER:

14:40:26 10 Q. Colonel Cills, did you prepare any documents
14:40:28 11 relating to the defendant's separation from the National
14:40:31 12 Guard?

14:40:32 13 A. I did.

14:40:35 14 Q. And in the documents that you created, what was the
14:40:45 15 reason for the separation from the National Guard?

14:40:48 16 MR. JUPITER: Your Honor, I object.

14:40:49 17 THE COURT: Sustained.

14:41:05 18 MR. POTTER: Court's indulgence, Judge?

14:41:17 19 That's all I have for the witness at this time,
14:41:23 20 Judge.

14:41:23 21 THE COURT: Let me see counsel briefly at
14:41:25 22 sidebar.

14:41:31 23 (Sidebar discussion held as follows:)

14:41:32 24 THE COURT: Let me just have counsel up here.
14:41:41 25 Why is this relevant?

14:41:44 1 MR. POTTER: It goes to motive, Judge. It goes
14:41:46 2 to motive for why she held two positions.

14:41:49 3 She was separated from the Guard because she could
14:41:52 4 not get clearance because she had financial
14:41:56 5 difficulties. And because of her finances, the National
14:41:59 6 Guard terminated her.

14:42:01 7 And I think it's relevant because in our view the
14:42:06 8 reason and the motive behind her having two positions at
14:42:08 9 the same time within the Guard is because she was having
14:42:12 10 financial difficulties.

14:42:13 11 THE COURT: And you want to establish that by
14:42:16 12 what, having this witness give a conclusory utterance,
14:42:22 13 that they fired her or terminated her because of that?

14:42:25 14 How would that establish that the witness has
14:42:28 15 motive -- I mean that the defendant had motive?

14:42:34 16 MR. POTTER: I can lay a better foundation.

14:42:36 17 THE COURT: You still haven't answered my
14:42:37 18 question. If this witness is going to -- you want this
14:42:40 19 witness to make some conclusory sort of utterance: We
14:42:43 20 fired her because she had financial difficulties.

14:42:46 21 How does that establish that the defendant had a
14:42:48 22 financial motive to do what she was doing?

14:42:52 23 MR. POTTER: Well, Judge, it's -- of course
14:42:54 24 it's circumstantial evidence of that motive.

14:42:56 25 THE COURT: Well, circumstantial evidence would

14:42:59 1 be you have evidence of her being late on her mortgage
14:43:02 2 payments and that sort of stuff, not someone making a
14:43:05 3 conclusory statement.

14:43:08 4 MR. POTTER: Well, Judge, that's why -- with
14:43:09 5 this witness --

14:43:10 6 THE COURT: Let me ask you this: You said she
14:43:13 7 had financial difficulties. What do you have to
14:43:15 8 establish that she has financial difficulties, that goes
14:43:18 9 towards motive?

14:43:19 10 MR. POTTER: The fact that she could not pass
14:43:21 11 her background security clearance --

14:43:23 12 THE COURT: Doesn't that cause us to dig in to
14:43:25 13 why she didn't pass the clearance?

14:43:28 14 What if they're wrong?

14:43:29 15 Do you have something to indicate she wasn't paying
14:43:32 16 her phone bill, she was not getting loans because of
14:43:35 17 insufficient income?

14:43:39 18 MR. POTTER: Yes. The denial of her security
14:43:42 19 clearance explains exactly why she is being denied
14:43:46 20 security clearance, and it is because of her
14:43:49 21 indebtedness, of her lack of -- well, because of her
14:43:53 22 indebtedness.

14:43:54 23 THE COURT: You're getting a third party to
14:43:56 24 bring in something, and there -- and then the jury would
14:43:58 25 have to rely on that third party's assessment in order

14:44:02 1 for the jury to make an assessment.

14:44:05 2 MR. POTTER: Well, Judge, it's a part of her
14:44:09 3 employment record at the National Guard, and it's a part
14:44:11 4 of her file. And I see no reason why we can't bring
14:44:15 5 that record in under a business record.

14:44:17 6 THE COURT: Well, I'm concerned about a 403
14:44:22 7 minitrial on that. If you had had something that isn't
14:44:26 8 as indirect -- here we have this witness who is going to
14:44:30 9 say something about someone else's conclusion, based on
14:44:34 10 some other source information, correct?

14:44:36 11 That is, she is going to talk about someone else's
14:44:40 12 conclusion, denial of security clearance --

14:44:41 13 MR. POTTER: Yes.

14:44:42 14 THE COURT: -- based on that other person who
14:44:43 15 is not here, their assessment of other documents or
14:44:49 16 things.

14:44:50 17 I don't know what they are. They're not on the
14:44:53 18 record what they are. I don't know if she was behind on
14:44:55 19 some sort of payment. I don't know if she was doing
14:44:58 20 something that brought her finances into question.

14:45:00 21 MR. POTTER: So the only way for us to get that
14:45:02 22 in, Judge, would be -- I'm trying to understand the
14:45:06 23 Court's reasoning -- to bring in the person who actually
14:45:10 24 did --

14:45:10 25 THE COURT: I'm not telling you how to bring it

14:45:11 1 in. I'm just telling you the problem with this witness
14:45:14 2 is precisely what I said. This witness is going to make
14:45:16 3 an utterance. It is conclusory. It is going to be an
14:45:21 4 utterance based on someone else's utterance.

14:45:23 5 And that person, who might be a security clearance
14:45:26 6 component of the agency, looked at some information from
14:45:28 7 another person or another entity, that suggested that
14:45:31 8 she has some financial problem.

14:45:39 9 I think it seems that you've got all these indirect
14:45:42 10 things -- and circumstantial evidence is fine as well.
14:45:46 11 But I'm talking about -- it seems to me I'm going -- you
14:45:48 12 want to prove up something that I think would be
14:45:51 13 significant, which is motive, and you're doing it in a
14:45:54 14 way that I think that could create a 403, and perhaps
14:46:02 15 some other evidentiary issues as well.

14:46:04 16 But it runs the risk of, I think, leading to a
14:46:08 17 minitrial on the issue of what underpins those
14:46:14 18 conclusions. So -- anyway, thank you, Counsel.

14:46:23 19 MR. POTTER: Thank you, Judge.

14:46:24 20 (End sidebar discussion, open court as follows:)

14:46:49 21 BY MR. POTTER:

14:46:49 22 Q. Colonel Cills, I have one, one last question.

14:46:56 23 You indicated that you were a deputy personnel
14:47:02 24 director?

14:47:03 25 A. Deputy chief of staff of personnel, which is

14:47:06 1 overseeing the Military Personnel Office, yes.

14:47:09 2 Q. And in that position, are you aware of any dual
14:47:31 3 employment for an employee who holds a military tech
14:47:35 4 assignment?

14:47:36 5 A. No.

14:47:46 6 MR. POTTER: No further questions Judge.

14:47:48 7 THE COURT: Attorney Jupiter.

14:47:57 8 CROSS-EXAMINATION

14:47:58 9 BY MR. JUPITER:

14:47:59 10 Q. Good afternoon, Colonel Cills.

14:48:01 11 A. Good afternoon.

14:48:03 12 Q. Colonel Cills, are you aware whether or not --
14:48:06 13 there's a National Guard technician handbook, isn't
14:48:10 14 there?

14:48:10 15 A. Yes.

14:48:11 16 Q. Okay. If you saw a copy of that handbook, would
14:48:14 17 you be able to identify it?

14:48:17 18 A. There have been several during the course of my
14:48:20 19 employment, so I'm not sure.

14:48:21 20 Q. Okay.

14:48:25 21 MR. JUPITER: May I approach the witness, Your
14:48:26 22 Honor, since this is a several-page document?

14:48:30 23 THE COURT: How many pages is it?

14:48:32 24 Is it more than four pages?

14:48:34 25 MR. JUPITER: Yes, Your Honor.

14:48:35 1 THE COURT: Okay. You can approach.

14:48:45 2 (Defendant's Exhibit 7 marked for identification.)

14:48:48 3 MR. JUPITER: I'm showing you what's been
14:48:49 4 marked as Defendant's Exhibit Number 7.

14:48:59 5 BY MR. JUPITER:

14:48:59 6 Q. Can you tell me if that is a National Guard
14:49:05 7 technician handbook?

14:49:07 8 THE COURT: Attorney Jupiter, examine from the
14:49:09 9 lectern.

14:49:10 10 MR. JUPITER: Yes, sir.

14:49:13 11 THE WITNESS: This looks like one that has been
14:49:15 12 issued by the National Guard, yes.

14:49:18 13 BY MR. JUPITER:

14:49:19 14 Q. Can you see the date on it?

14:49:20 15 A. It's dated November 2009.

14:49:21 16 Q. Okay. And do you know if that particular Guard
14:49:27 17 handbook was in effect in November of 2009?

14:49:32 18 A. If it says November 2009, I would guess so, yes.

14:49:35 19 Q. Okay. Do you see a section on that technician
14:49:40 20 handbook that deals with work hours, I believe on
14:49:43 21 page 5?

14:49:52 22 A. You want --

14:49:54 23 Q. Yes. Can you read to the jury what that says?

14:49:56 24 A. "The technician workweek" --

14:49:59 25 MR. POTTER: Objection, Your Honor.

14:50:00 1 THE COURT: Sustained.

14:50:02 2 BY MR. JUPITER:

14:50:02 3 Q. In fact, ma'am, the work hours are not set for a
14:50:06 4 military technician, are they?

14:50:09 5 A. Not true.

14:50:12 6 Q. Okay. Does the handbook indicate that the work
14:50:14 7 hours are not set at 8:00 to 5:00, or does it say it's
14:50:21 8 set at 8:00 to 5:00?

14:50:25 9 A. The --

14:50:26 10 Q. Does it state in that --

14:50:28 11 MR. POTTER: Objection, Your Honor.

14:50:29 12 THE COURT: Overruled.

14:50:29 13 BY MR. JUPITER:

14:50:30 14 Q. Does it state in the military tech handbook as to
14:50:34 15 what the workweek hours are?

14:50:35 16 A. No, because each state would have its own policy.

14:50:38 17 Q. Does it state in there, they are from 8:00 to 5:00?

14:50:41 18 A. Does it state in here? No, it does not. Because
14:50:44 19 as I said, each state has its own policy.

14:50:47 20 Q. You testified before about what's the general
14:50:50 21 workweek, right?

14:50:50 22 A. Correct.

14:50:51 23 Q. And that was general as to the military, right?

14:50:54 24 A. I'm sorry?

14:50:55 25 Q. That's general as to the military --

14:50:57 1 A. Correct.

14:50:58 2 Q. -- right?

14:50:58 3 A. Correct. Correct.

14:50:59 4 Q. And that particular handbook regards all of the

14:51:01 5 military, doesn't it?

14:51:03 6 A. All of the National Guard.

14:51:04 7 Q. All of the National Guard, right?

14:51:06 8 A. Correct.

14:51:07 9 Q. Which the Virgin Islands National Guard would come

14:51:09 10 under, correct?

14:51:09 11 A. Except that each state also has their individual

14:51:12 12 technician handbook that would establish their

14:51:15 13 individual working hours.

14:51:16 14 Q. Okay.

14:51:18 15 MR. JUPITER: Your Honor, I move to admit

14:51:22 16 Defense Exhibit Number 7.

14:51:23 17 MR. POTTER: Objection, Judge.

14:51:25 18 MR. JUPITER: Page 5 of Defendant's Exhibit 7.

14:51:27 19 THE COURT: Under advisement.

14:51:29 20 BY MR. JUPITER:

14:51:29 21 Q. And, ma'am, just to be clear, that particular book

14:51:33 22 states that you just work 80 hours over a two-week

14:51:38 23 period, doesn't it?

14:51:39 24 A. On page 5?

14:51:40 25 Q. Yes.

14:51:41 1 A. Let me go back.

14:51:44 2 MR. POTTER: Your Honor, I'm going to object to
14:51:47 3 any reference of that, any specific page of that
14:51:51 4 document.

14:51:52 5 THE COURT: Sustained.

14:51:53 6 Next question.

14:51:55 7 MR. JUPITER: Okay.

14:51:55 8 BY MR. JUPITER:

14:51:56 9 Q. Now, you, in February of -- I'm sorry -- in April
14:52:05 10 of 2010, you were deputy chief of staff, correct?

14:52:10 11 A. I was, yes.

14:52:11 12 Q. You reported to General -- then-Colonel Lewis,
14:52:13 13 correct?

14:52:14 14 A. Correct.

14:52:14 15 Q. And you did not supervise the ESGR person?

14:52:18 16 A. No, I did not.

14:52:18 17 Q. And you did not supervise the military technician
14:52:23 18 person, correct?

14:52:23 19 A. I had persons on my staff, yes.

14:52:26 20 Q. You didn't supervise Sherrymae Morales?

14:52:29 21 A. No, I did not.

14:52:29 22 Q. You never supervised Sherrymae Morales, did you?

14:52:33 23 A. No.

14:52:34 24 Q. But you were familiar -- you had to --

14:52:37 25 Mrs. Morales -- the communication between her and you

14:52:39 1 was just to one specific area, correct, in terms of her
14:52:42 2 duties as the ESGR?

14:52:43 3 A. As the ESGR that were related, yes.

14:52:48 4 Q. And part of what the ESGR person had to do, the
14:52:52 5 contract position, the person in that contract position
14:52:59 6 has to make that request for funding, correct?

14:53:02 7 A. I can't speak to the positions, what the position
14:53:06 8 did. I just know my role with the position.

14:53:08 9 Q. And your role was with the budget, wasn't it?

14:53:12 10 A. Correct.

14:53:14 11 Q. To make sure the budget --

14:53:15 12 A. Was expended.

14:53:16 13 Q. -- was expended?

14:53:17 14 A. Correct.

14:53:17 15 Q. And the person who you communicated with, with
14:53:20 16 regards to spending the budget, was the ESGR contract
14:53:25 17 person?

14:53:25 18 A. Correct.

14:53:25 19 Q. Not the volunteer, correct?

14:53:26 20 A. Correct.

14:53:28 21 Q. And in fact, when Mrs. Morales spoke to you at that
14:53:37 22 time, she was still the ESGR contract person?

14:53:42 23 A. At which time?

14:53:43 24 Q. Can I have Exhibit 10 published again?
14:53:43 25 (Exhibit published.)

14:53:43 1 BY MR. JUPITER:

14:54:30 2 Q. Now, as you stated before, you were having contacts
14:54:38 3 with Mrs. Morales via e-mail --

14:54:40 4 A. Correct.

14:54:40 5 Q. -- about spending funds for ESGR, correct?

14:54:44 6 A. Correct.

14:54:45 7 Q. And you always had those contacts with the ESGR
14:54:50 8 contract person, Mrs. Morales, didn't you?

14:54:53 9 A. And her, she also had an assistant at some point,
14:54:57 10 so those two.

14:54:57 11 Q. Those two paid positions, correct?

14:55:00 12 A. Correct.

14:55:00 13 Q. And that's what you're talking about a budget in
14:55:03 14 this e-mail, correct?

14:55:04 15 A. Correct. Uhm-hmm.

14:55:05 16 Q. And at this time she's working as a military
14:55:08 17 technician, correct?

14:55:09 18 A. Correct.

14:55:10 19 Q. And also, she -- you were not at this time a person
14:55:17 20 who would be involved in hiring her replacement, would
14:55:21 21 you?

14:55:22 22 A. No.

14:55:22 23 Q. That would be something that would come with the
14:55:25 24 concurrence of General Lewis, correct, then-Colonel
14:55:29 25 Lewis?

14:55:30 1 A. Correct.

14:55:31 2 Q. And in terms of -- you had no discussions with her
14:55:35 3 in terms of who was going to replace her, correct?

14:55:38 4 A. Just what you see on the e-mail.

14:55:40 5 Q. That's the only communication you had, right?

14:55:43 6 A. Yes.

14:55:43 7 Q. Okay. You were not privy to discussions with her,
14:55:47 8 Mr. Hignite or Colonel Lewis regarding --

14:55:52 9 A. About a replacement?

14:55:53 10 Q. -- about a replacement?

14:55:55 11 A. No, I was not.

14:55:56 12 Q. At that time?

14:55:57 13 A. No, I was not.

14:55:58 14 Q. And, in fact, you did not know anyone who stepped
14:56:01 15 into this position for the rest of this year, did you?

14:56:05 16 A. For the rest of which year?

14:56:07 17 Q. The rest of 2010?

14:56:09 18 A. To my knowledge, there was no one in the position
14:56:11 19 full-time.

14:56:15 20 Q. All right. Now, it indicates -- Mr. Morales
14:56:18 21 indicated to you in her response, I -- "I'll be staying
14:56:26 22 on in a voluntary capacity," correct?

14:56:28 23 A. Uhm-hmm.

14:56:28 24 Q. Now, when she says "I'll be staying," does that
14:56:31 25 indicate to you: I will be staying?

14:56:36 1 I- apostrophe -l-l, is that: I will be staying?

14:56:41 2 A. That's what it means.

14:56:45 3 Q. Okay. So in terms of -- you knew she was the ESGR
14:56:49 4 person prior to this e-mail, correct?

14:56:53 5 A. Correct.

14:56:53 6 Q. You never heard of her resigning, correct?

14:56:57 7 A. I wouldn't have, because --

14:56:59 8 Q. Okay.

14:57:01 9 A. -- because I was not involved in the selection or
14:57:04 10 replacement process.

14:57:05 11 Q. Right. And you never heard of a replacement,
14:57:08 12 correct?

14:57:08 13 A. This was --

14:57:08 14 Q. And you never heard of a replacement, did you?

14:57:12 15 A. This was within a few weeks coming on board as
14:57:16 16 technician, so there was a window there. Normally we
14:57:18 17 don't bring people on immediately, so normally there
14:57:21 18 would be a window there before --

14:57:23 19 Q. You wouldn't bring people on period, do you?

14:57:26 20 A. I wouldn't say I don't bring people on. In this
14:57:31 21 particular case, no.

14:57:32 22 Q. And she indicated to you that it would be sometime
14:57:38 23 in the future, she would stay on as a volunteer?

14:57:40 24 A. I interpret that as, "I will now."

14:57:44 25 Q. Okay.

14:57:45 1 A. I -- yeah.

14:57:47 2 Q. Well, so you're -- at this time you're thinking
14:57:51 3 she's going to get a replacement, correct?

14:57:53 4 A. Which is why I asked for the name, yes.

14:57:56 5 Q. Okay. Well, did you ask for a name in there?

14:57:59 6 A. In the bottom it says, "If you can pass on to the
14:58:02 7 ESGR and/or your replacement, that would be helpful as
14:58:05 8 well."

14:58:06 9 Q. You didn't ask for --

14:58:07 10 A. Well, not a name.

14:58:08 11 Q. You didn't ask her for a name, did you?

14:58:10 12 A. No.

14:58:10 13 Q. Okay. And the next month you never asked her for a
14:58:14 14 name, did you?

14:58:15 15 A. No.

14:58:15 16 Q. And as far as you knew, there was no replacement
14:58:24 17 for the rest of that year?

14:58:25 18 A. Correct.

14:58:26 19 Q. And at some point, Baron Hignite -- I want to move
14:58:35 20 you forward to September of 2011.

14:58:37 21 First of all, when did your position change as far
14:58:40 22 as chief of staff?

14:58:41 23 A. I took this job in January of 2012.

14:58:44 24 Q. Okay. When did your position change from being --
14:58:47 25 assistant deputy chief of staff, right?

14:58:52 1 Was --

14:58:52 2 A. I served from 2007 until the summer of 2010. I was
14:58:56 3 gone for about six months. And then I came back into
14:58:59 4 the position for a year, which is 2011.

14:59:02 5 Q. Okay. So January 2011, you were a what?

14:59:05 6 A. 2011, I was the deputy chief of staff of personnel.

14:59:11 7 Q. Okay. You were deputy chief of staff --

14:59:14 8 A. In January of 2011, yes.

14:59:16 9 Q. Okay. And part of your duties were that you're
14:59:20 10 supposed to oversee this -- see who has this ESGR
14:59:26 11 contract, correct?

14:59:26 12 A. That was one of about over 20 accounts, yes.

14:59:30 13 Q. Okay. And you're saying that between April --
14:59:39 14 between January of 2011 and summer of 2- -- June of
14:59:47 15 2011, you had no knowledge of who the ESGR person was?

14:59:52 16 A. There was someone that replaced me at the latter
14:59:56 17 part of 2010 to when I came back to the position in
15:00:02 18 January. Until she departed in April, there was no
15:00:07 19 named person.

15:00:07 20 So just like the person who replaced me, I
15:00:10 21 continued on to -- not communicate with her, I think
15:00:13 22 most of my communication at the time was with
15:00:16 23 Ms. Lescott who was the admin assistant.

15:00:20 24 Q. Okay. Is that a no, that you did not know, between
15:00:22 25 January and June -- you're saying you did not know

15:00:25 1 who --

15:00:25 2 A. Between January and April when she left, there was
15:00:28 3 no named ESGR replacement.

15:00:31 4 Q. Well, Baron Hignite called you in 2011, didn't he?

15:00:36 5 A. There was absolutely no communication --

15:00:38 6 Q. Baron --

15:00:40 7 A. -- in 2011.

15:00:42 8 Q. Ma'am, Baron Hignite called you in 2011, didn't he?

15:00:46 9 A. He did not.

15:00:47 10 Q. And Mr. Hignite -- as a matter of fact, during that
15:00:50 11 time period Baron Hignite would have to get your
15:00:59 12 concurrence --

15:01:00 13 A. There was zero communication in 2011 between
15:01:03 14 Mr. Hignite and I.

15:01:07 15 Q. Okay. And you -- you participated in ESGR events
15:01:13 16 besides this luncheon?

15:01:15 17 A. I didn't participate in the luncheon. My staff --
15:01:18 18 you see a lot of communication with me, but my staff did
15:01:21 19 a lot of the leg work in terms of the orders, the
15:01:24 20 communication with the hotel, the paying of the bills,
15:01:27 21 et cetera.

15:01:27 22 Q. And the person that you would contact -- that the
15:01:32 23 staff would contact would be Mrs. Morales, correct?

15:01:36 24 A. It depends on the time frame. Because a majority
15:01:40 25 of the time it would be Mrs. Lescott, the admin

15:01:45 1 assistant.

15:01:46 2 Q. And at some point you became aware of -- ma'am, you
15:02:01 3 worked in the same building as Mrs. Morales?

15:02:03 4 A. We've worked on opposite sides of the building,
15:02:06 5 correct.

15:02:06 6 Q. On the same floor?

15:02:07 7 A. All on one level.

15:02:09 8 Q. But you wouldn't see Mrs. Morales?

15:02:11 9 A. No, because there were different entrances to
15:02:15 10 different sides of the building.

15:02:16 11 Q. And you didn't have a personal relationship with
15:02:18 12 Mrs. Morales, correct?

15:02:19 13 A. No.

15:02:19 14 Q. And you didn't attend any of the ESGR events
15:02:22 15 besides this luncheon?

15:02:23 16 A. I did not attend the luncheon. I did not attend
15:02:26 17 any of the events.

15:02:35 18 MR. JUPITER: No further questions -- some
15:02:39 19 other questions, Your Honor.

15:02:42 20 BY MR. JUPITER:

15:02:42 21 Q. You were aware of Mrs. Morales' efforts to get a
15:02:46 22 replacement, weren't you?

15:02:47 23 A. No, I was not.

15:02:48 24 Q. Okay. You were aware of her, in 2011, trying to
15:02:55 25 get Janice Aelleynne to be the replacement, weren't you?

15:02:58 1 A. No, I did not.

15:02:59 2 Q. Did you draw a travel order for Ms. Aelleyne to
15:03:03 3 attend an ESGR?

15:03:04 4 A. There was an order that I found, which was passed
15:03:07 5 on. It was signed -- just like a lot of other persons
15:03:11 6 that were traveling on ESGR funds, so you will see my
15:03:14 7 signature on all of those orders.

15:03:16 8 My staff would prepare them based on the request
15:03:20 9 that they got, and I would sign them.

15:03:27 10 MR. JUPITER: I want to show you what I'm
15:03:29 11 marking as Defense Exhibit Number 8.

15:03:31 12 (Defendant's Exhibit 8 marked for identification.)

15:04:06 13 THE COURT: Why don't we use the Elmo so we can
15:04:08 14 move along.

15:04:09 15 MR. JUPITER: Yes, Your Honor.

15:04:09 16 THE COURT: Use the Elmo.

15:04:16 17 BY MR. JUPITER:

15:04:16 18 Q. Showing you the top of Defendant's Exhibit
15:04:21 19 Number 8, a three-page document --

15:04:23 20 A. Right.

15:04:24 21 Q. -- do you recognize that?

15:04:26 22 A. Yes. It's an e-mail from me to Mrs. Morales on
15:04:32 23 February 11, '11.

15:04:35 24 Q. And the second page, is that a continuation of it?
15:04:37 25 Of the e-mail string?

15:04:40 1 A. Yes.

15:04:41 2 Q. Okay.

15:04:42 3 A. There's an e-mail for an invitational travel order.

15:04:47 4 Q. And the third page of it, is that the -- can you

15:04:51 5 see that?

15:04:52 6 A. That would have been an invitational travel order

15:04:56 7 drafted by my staff for my signature.

15:04:58 8 Q. Okay. And you're saying your staff did that, but

15:05:00 9 you didn't see it?

15:05:01 10 A. If I -- if you see one with my signature on it,

15:05:06 11 then yes.

15:05:07 12 Q. So you're saying --

15:05:08 13 A. Because there are a number of persons that traveled

15:05:10 14 on the ESGR funds for training, so I would sign

15:05:13 15 invitational travel for all of those persons.

15:05:15 16 MR. JUPITER: Okay.

15:05:16 17 No further questions, Your Honor.

15:05:17 18 THE COURT: Any redirect?

15:05:19 19 MR. POTTER: Yes, Judge.

15:05:20 20 REDIRECT EXAMINATION

15:05:21 21 BY MR. POTTER:

15:05:30 22 Q. Colonel Cills, when you sent that e-mail --

15:05:35 23 MR. POTTER: Put back up that e-mail, please.

15:05:38 24 Government's Exhibit 10.

15:05:53 25 And can you highlight the portion, "I know you are

15:05:56 1 no longer the..."

15:06:13 2 BY MR. POTTER:

15:06:13 3 Q. Now, Colonel Cills, did Mrs. Morales ever correct
15:06:16 4 you and say, "I am still the ESGR coordinator"?

15:06:22 5 You start out your email, "I know you are no longer
15:06:25 6 the ESGR coordinator..."

15:06:28 7 Did she ever say to you, "No, I am still the ESGR
8 coordinator?

9 A. No. It's indicated in the reply she would be
10 staying on in a voluntary capacity.

11 Q. And comparing her response that was given to your
12 question, how did you interpret her response --

13 THE COURT: All right. Let's move on.

15:07:21 14 Next question.

15:07:21 15 MR. POTTER: Yes.

15:07:21 16 BY MR. POTTER:

15:07:22 17 Q. Did you ever see time sheets to determine --

15:07:24 18 A. No.

15:07:25 19 Q. -- ESGR --

15:07:25 20 A. I would not have seen those, no.

15:07:30 21 Q. When you returned in -- is it 2011?

15:07:35 22 A. 2011, correct.

15:07:36 23 Q. The majority of your communications regarding ESGR,
15:07:40 24 who was that with?

15:07:41 25 A. At that point it was with Ms. Lescott.

15:08:12 1 Q. Now --

15:08:15 2 MR. POTTER: Court's indulgence?

15:08:16 3 THE COURT: Yes.

15:08:16 4 (Pause)

15:08:16 5 MR. POTTER: Could you put back up Exhibit 10,
15:08:20 6 please.

15:08:36 7 Could you make it bigger, I guess?

15:08:50 8 BY MR. POTTER:

15:08:50 9 Q. Now, at the bottom of the e-mail Ms. Morales
15:09:00 10 responds to you. What title does she use in responding
15:09:03 11 to your e-mail?

15:09:05 12 A. She uses her military rank.

15:09:08 13 Q. Did she respond to you, "Morales, ESGR
15:09:12 14 coordinator"?

15:09:13 15 MR. JUPITER: Objection, Your Honor.

15:09:14 16 THE COURT: Sustained.

15:09:14 17 You're becoming argumentative. You're leading your
15:09:17 18 witness.

15:09:18 19 MR. POTTER: Yes, Judge.

15:09:19 20 THE COURT: Let's move on.

15:09:26 21 MR. POTTER: That's all I have, Judge.

15:09:29 22 THE COURT: Colonel Cills, thank you for your
15:09:31 23 testimony.

15:09:32 24 You may step down.

15:09:32 25 (Witness withdrew from stand.)

15:09:33 1 THE COURT: Ladies and gentlemen, it is time
15:09:35 2 for our afternoon break. We'll take a 15-minute break
15:09:38 3 and then we'll resume.

15:09:41 4 (Jury out)

15:10:28 5 THE COURT: Counsel, we'll resume in
15:10:31 6 15 minutes.

15:10:31 7 We'll hear the civil matter in chambers.

15:46:16 8 (Court in recess, 3:10 p.m.)

15:46:16 9 (After recess, 3:46 p.m., jury present)

15:46:22 10 THE COURT: Call your next witness.

15:46:23 11 MR. POTTER: Yes, Judge. The government calls
15:46:26 12 General Elton Lewis.

15:46:51 13 (Witness sworn)

15:46:52 14 THE WITNESS: I do.

15:47:15 15 (Pause)

15:47:15 16 MR. POTTER: Your Honor, there seem to be some
15:47:20 17 documents --

15:47:20 18 THE COURT: If you want to retrieve them, you
15:47:22 19 can retrieve them.

15:47:23 20 MR. POTTER: I don't know who they belong to.

15:47:26 21 THE COURT: They're yours, Attorney Jupiter?

15:47:28 22 MR. JUPITER: Yes, Your Honor.

15:47:29 23 THE COURT: Okay. Can you retrieve them?

15:47:30 24 MR. POTTER: May I proceed, Judge?

15:47:32 25 THE COURT: Yes.

15:47:32 1 THEREUPON, ELTON LEWIS, having been duly sworn,
15:47:32 2 was examined and testified as follows:

15:47:32 3 DIRECT EXAMINATION

15:47:32 4 BY MR. POTTER:

15:47:32 5 Q. Good afternoon, sir.

15:47:33 6 A. Good afternoon.

15:47:34 7 Q. Could you give us your full name for the record,
15:47:36 8 please, and then spell your first and your last name for
15:47:39 9 the court reporter?

15:47:40 10 A. My name is Elton Lewis, spelled E-l-t-o-n, last
15:47:46 11 name Lewis, L-e-w-i-s.

15:47:48 12 Q. And, sir, do you have a military rank?

15:47:54 13 A. I do. My retired rank is brigadier general.

15:48:01 14 Q. And how are you currently employed?

15:48:03 15 A. Actually, I am officially retired from the
15:48:06 16 Government of the Virgin Islands.

15:48:15 17 Q. When you worked for the -- well, did you in fact
15:48:18 18 work for the National Guard?

15:48:19 19 A. I did.

15:48:20 20 Q. And how long were you attached to the Virgin
15:48:24 21 Islands National Guard?

15:48:24 22 A. I retired from the Virgin Islands National Guard
15:48:27 23 after 38 years of service. I officially retired in
15:48:31 24 August of 2014.

15:48:39 25 Q. And just briefly, what are some of the positions

15:48:42 1 that you have held in the Guard over those 30-something
15:48:47 2 years?

15:48:47 3 A. Well, I held numerous positions, from the second
15:48:50 4 lieutenant all the way up to colonel, then a flight
15:48:54 5 officer, meaning the brigadier general, all competitive
15:49:01 6 ranks that required a number of schooling throughout the
15:49:05 7 years.

15:49:06 8 Q. And let me draw your attention to back in 2007.
15:49:13 9 Were you employed with the Guard in 2007?

15:49:17 10 A. Yes, sir. Actually, I came in as the director of
15:49:20 11 the joint staff for the Virgin Islands National Guard in
15:49:23 12 August of 2007.

15:49:26 13 Q. As director of the joint staff, what are your --
15:49:30 14 what were some of your duties and responsibilities?

15:49:32 15 A. As the director, I had the overall operational,
15:49:37 16 daily operation of the Guard. That means I deal with a
15:49:40 17 lot of the administrative logistics and operational
15:49:44 18 matters on a daily basis.

15:49:46 19 Q. Okay. Sir, are you familiar with Sherrymae
15:49:50 20 Morales?

15:49:51 21 A. I am.

15:49:51 22 Q. And tell us how you know Mrs. Morales.

15:49:56 23 A. Well, I knew Mrs. Morales from -- from the time,
15:50:01 24 actually, from a young kid. We probably pretty much
15:50:05 25 grow up in the same neighborhood.

15:50:07 1 Then over a period of time she, I believe, left.

15:50:11 2 And my association again with her was back when she --

15:50:16 3 we were both in the 61st Military Police Company of the

15:50:21 4 Virgin Islands National Guard.

15:50:23 5 Q. And do you know -- did there come a time that she

15:50:32 6 retired from the Guard, that you know of?

15:50:35 7 A. Yes. She did retire, as far as I know.

15:50:38 8 Q. Do you recall what year that would have been?

15:50:42 9 A. I don't recollect the year that she would have

15:50:46 10 retired.

15:50:51 11 Q. Now in 2007, what, if any, position, do you know

15:50:55 12 that Mrs. Morales held related to the National Guard?

15:51:00 13 A. 2007, she held the position with MPSC, the ESG--

15:51:16 14 ESGR, I'm sorry.

15:51:17 15 Q. What is MPSC?

15:51:18 16 A. I don't know the acronym or the actual spelling of

15:51:21 17 the name, but it had something to do with the ESGR,

15:51:24 18 which is the Guards and Reserve component.

15:51:34 19 Q. And do you know how long she held that position?

15:51:39 20 A. I am not sure how long she held that position.

15:51:47 21 Back in 2007, and I don't recall, regular, how long she

15:51:51 22 would have held that position.

15:51:53 23 Q. Now, back in 2007 when she was in the ESGR contract

15:52:00 24 position, did you have any supervisory authority over

15:52:05 25 her?

15:52:06 1 A. I wouldn't say that I had direct supervisory
15:52:09 2 authority over her. I was one of those individuals that
15:52:13 3 made the recommendation to hire her through the contract
15:52:18 4 process, when that process -- when that event came, came
15:52:24 5 up.

15:52:32 6 Q. Now, while Mrs. Morales was employed as an ESGR,
15:52:41 7 what, if any, conversations did you have with her
15:52:45 8 regarding her desire to return to the National Guard?

15:52:55 9 A. I believe it became a point where there were a
15:53:00 10 number of deployments during that period of time. And
15:53:05 11 Colonel Adams, who were the G5, meaning the strategic
15:53:12 12 planner at the time, were deployed at Guantanamo Bay.
15:53:20 13 And at that point Morales expressed an interest in that
15:53:23 14 position, to fill the absence of Colonel Adams while she
15:53:27 15 was on deployment.

15:53:30 16 Q. And after she expressed this interest, what, if
15:53:38 17 anything, did you do to assist her in getting this
15:53:41 18 position?

15:53:41 19 A. Well, I couldn't assist her in anything. There's a
15:53:44 20 process that has to be done. So it's not like because
15:53:47 21 she's interested in it, I have the authority to hire
15:53:50 22 her. I don't have the authority to hire. It's a
15:53:52 23 process that she has to go through, a competitive
15:53:54 24 process.

15:53:55 25 A number of people would have applied for the

15:53:56 1 position, and then based on qualifications. And even up
15:53:59 2 at the end of the qualifications, I still don't have
15:54:03 3 that authority. I can only recommend. The final
15:54:06 4 authority of hiring would be based -- would be that of a
15:54:09 5 adjutant general, which is General Rivera.

15:54:21 6 Q. Are you aware whether or not Mrs. Morales was
15:54:23 7 ultimately hired for a military-type position with the
15:54:28 8 Guard?

15:54:28 9 A. She was.

15:54:29 10 Q. To the best of your recollection, do you recall
15:54:33 11 approximately when that was?

15:54:35 12 A. To the best of my recollection, Attorney, I can't
15:54:38 13 remember exactly what month or what year that would have
15:54:41 14 been. I would have had -- I would have to see
15:54:44 15 documents. I just don't remember offhand.

15:54:48 16 Q. Okay.

15:54:48 17 (Pause)

15:54:58 18 Now, you said you had knowledge of Morales from
15:55:01 19 when she entered the Guard.

15:55:02 20 A. Correct.

15:55:03 21 Q. Do you know some of the positions that she held in
15:55:06 22 the Guard?

15:55:06 23 A. Major Morales held numerous positions in the Guard,
15:55:10 24 that of company commander, that of platoon leader. And
15:55:14 25 I know that she held for a number of years the HRO,

15:55:19 1 which meaning the human resources officer for the
15:55:24 2 Guards, which has oversight of all personnel action
15:55:28 3 within the Guard.

15:55:30 4 And even with those personnel actions, the ESGR
15:55:37 5 program, also, she would have some limited --

15:55:40 6 MR. JUPITER: I would object to nonresponsive.

15:55:42 7 THE COURT: Overruled.

15:55:52 8 BY MR. POTTER:

15:55:53 9 Q. Now after Morales reentered the Guard, what, if
15:56:02 10 any, request did she make of you?

15:56:04 11 A. In terms of, of what?

15:56:10 12 Q. In terms of her --

15:56:11 13 MR. JUPITER: Object to leading.

15:56:12 14 THE COURT: Sustained. You can't lead your own
15:56:14 15 witness.

15:56:14 16 MR. POTTER: Yes, Judge.

15:56:15 17 THE COURT: Answer the question as best you
15:56:17 18 can.

15:56:19 19 THE WITNESS: Attorney, could you repeat that?

15:56:21 20 MR. POTTER: Yes.

15:56:21 21 BY MR. POTTER:

15:56:26 22 Q. Once Morales entered the Guard, were you aware that
15:56:30 23 she reentered the Guard?

15:56:32 24 A. Yes, I did.

15:56:33 25 Q. Do you know what position she held when she came

15:56:35 1 back on to the Guard?

15:56:36 2 A. Well, she held two positions. The first one would
15:56:40 3 have been the ESGR position, and the second one would
15:56:46 4 have been the J5 position. And so the last position I
15:56:53 5 know that she held was the J5 position.

15:56:59 6 Q. Now you mentioned the ESGR position. Is that a
15:57:02 7 position within the National Guard?

15:57:05 8 What was the nature of that --

15:57:07 9 MR. JUPITER: Objection, Your Honor. This
15:57:09 10 witness is not qualified to testify to that.

15:57:13 11 THE COURT: All right. Let me hear the
15:57:14 12 complete question before I rule on the objection.

15:57:19 13 MR. POTTER: I'll rephrase the question, Judge.

15:57:21 14 THE COURT: All right.

15:57:24 15 BY MR. POTTER:

15:57:25 16 Q. When Mrs. Morales was hired as the, as you say, a
15:57:31 17 G5 --

15:57:32 18 A. J5.

15:57:33 19 Q. -- J5, what happened to her ESGR contract position?

15:57:42 20 A. Well, Major Morales could not have held two
15:57:46 21 positions --

15:57:47 22 MR. JUPITER: Objection, Your Honor. First of
15:57:49 23 all, it's not responsive --

15:57:50 24 THE COURT: Sustained.

15:57:52 25

15:57:52 1 BY MR. POTTER:

15:57:52 2 Q. Did you have any conversations with her regarding
15:57:55 3 her ESGR position?

15:57:56 4 A. I remember distinctly at one point Major Morales
15:58:02 5 indicated to me or expressed to me if I would accept her
15:58:08 6 appointing two positions.

15:58:10 7 And my response to her was: No, you can't do that.

15:58:13 8 You know, I think my exact words was something to
15:58:15 9 the effect that, "You crazy."

15:58:40 10 Q. Now, were you her direct supervisor in her J5
15:58:45 11 position?

15:58:45 12 A. In her J5 position I was her direct supervisor,
15:58:49 13 yes, I was.

15:58:50 14 Q. And what did she do as a J5?

15:58:55 15 A. A J5, again, is basically a strategic planner
15:58:59 16 position. And she also have daily responsibility of
15:59:02 17 drafting letters, both for myself and the adjutant
15:59:06 18 general. She review regulations and policies and that
15:59:10 19 sort of things.

15:59:15 20 Q. And what are the hours of work of the J5, under
15:59:20 21 your supervision?

15:59:22 22 A. It would be normally -- work officially starts at
15:59:27 23 8:00, but normally Morales would be there like 7:30 in
15:59:33 24 the morning, until 5:00, or if there are other
15:59:41 25 activities, even after that.

15:59:47 1 Q. So the regular working hours --

15:59:49 2 A. Correct.

15:59:53 3 Q. -- would be what? The regular working hours?

15:59:56 4 A. Well, our regular working hours would normally be
15:59:58 5 8:00 to 5:00.

15:59:59 6 Q. What days of the week?

16:00:01 7 A. Yeah.

16:00:01 8 Q. What days of the week?

16:00:02 9 A. That would be Monday through Friday.

16:00:12 10 Q. And where was her office located as a J5?

16:00:18 11 A. J5, her office was located in the La Grande area.
16:00:24 12 We had the old O'Neal building at the time, and she
16:00:27 13 would have occupied an office on the eastern end of the
16:00:31 14 building.

16:00:32 15 Q. And General, do you see Mrs. Morales here in court
16:00:38 16 today?

16:00:38 17 A. Yes.

16:00:38 18 Q. And could you point her out and tell us where she
16:00:42 19 is seated, an article of clothing that she's wearing?

16:00:45 20 A. Well, I can't see her article of clothing, but
16:00:48 21 she's sitting next to counsel, to your right.

16:00:51 22 THE COURT: You need to stand up?

16:00:55 23 MR. POTTER: If you need stand up to see, you
16:00:57 24 can stand up.

16:00:58 25 THE WITNESS: Major Morales is sitting right

16:01:01 1 next to counsel. She has a brown suit on with a white
16:01:06 2 blouse, with gold earrings.

16:01:13 3 MR. POTTER: Your Honor, could the record
16:01:14 4 reflect the identification of Sherrymae Morales?

16:01:17 5 THE COURT: Yes, the record will reflect that
16:01:19 6 the witness has identified the defendant, Sherrymae
16:01:22 7 Morales.

16:01:32 8 BY MR. POTTER:

16:01:33 9 Q. Now, General, do you know whether Mrs. Morales
16:01:35 10 resigned the ESGR position?

16:01:37 11 MR. JUPITER: Object to leading, Your Honor.

16:01:39 12 THE COURT: Sustained.

16:01:40 13 BY MR. POTTER:

16:01:41 14 Q. With respect to Ms. Morales ESGR position, what
16:01:50 15 information, if any, do you have regarding whether she
16:01:53 16 kept that position?

16:01:55 17 A. I am not aware of Major Morales holding or keeping
16:02:01 18 any ESGR position, particularly when she was already
16:02:05 19 hired as the J5. So she would have had to, had she --

16:02:09 20 MR. JUPITER: Objection to the witness' -- is
16:02:14 21 nonresponsive, and the witness is about to express
16:02:17 22 opinion.

16:02:18 23 THE COURT: Well, I haven't heard what he said.
16:02:20 24 I didn't get a sense --

16:02:21 25 Go ahead.

16:02:21 1 THE WITNESS: I'm sorry?

16:02:23 2 THE COURT: Wait for the next question.

16:02:26 3 Go ahead.

16:02:44 4 BY MR. POTTER:

16:02:44 5 Q. What actions, if any, did you take to confirm
16:02:48 6 whether or not Mrs. Morales had resigned the ESGR
16:02:54 7 position?

16:02:56 8 A. Actually, none. Because I would imagine, as a
16:03:02 9 senior officer, when you get instructions --

16:03:05 10 MR. JUPITER: Objection, Your Honor.

16:03:06 11 THE COURT: Again, don't tell us what you
16:03:09 12 imagine. Just tell us what you did and what you
16:03:11 13 observed.

16:03:12 14 All right. Wait for the next question.

16:03:17 15 BY MR. POTTER:

16:03:18 16 Q. Why did you take no action to verify?

16:03:21 17 A. Because she was specifically told that there is
16:03:26 18 only one position at any given time. So once I
16:03:31 19 established that, it is just my assumption that as a
16:03:35 20 senior officer, that is, that is the order.

16:03:56 21 Q. Now, what conversation did you have with anyone
16:03:58 22 else within the Guard regarding Morales's initial
16:04:04 23 request to you to hold both the ESGR and the military
16:04:09 24 tech position?

16:04:10 25 MR. JUPITER: Your Honor, I would object. This

16:04:13 1 witness has testified he doesn't know when --

16:04:16 2 THE COURT: Stop -- overruled.

16:04:20 3 THE WITNESS: When that conversation was had, I
16:04:22 4 immediately went and I reported this to General Rivera.
16:04:30 5 And I basically said to General Rivera, you know: I was
16:04:36 6 asked about this dual process and I am not going to --
16:04:42 7 that's not something that I'm going to sanction.

16:04:47 8 And that was reported to the top, meaning General
16:04:51 9 Rivera, and that was done almost instantaneously.

16:05:09 10 BY MR. POTTER:

16:05:09 11 Q. Now, did you -- from the period of time
16:05:19 12 Mrs. Morales came into the Guard as the military tech,
16:05:22 13 what contacts, if any, did you have -- what
16:05:31 14 conversation --

16:05:31 15 MR. POTTER: Let me rephrase, Judge. Sorry.

16:05:31 16 BY MR. POTTER:

16:05:34 17 Q. What conversations, if any, did you have with
16:05:38 18 Mrs. Morales regarding any ESGR issues?

16:05:44 19 A. I don't recall -- I mean, Mrs. Morales would, when
16:05:50 20 she held the position with the ESGR, we will have
16:05:54 21 discussions about the function and where she wanted to
16:06:00 22 take the program and everything. And I think she also
16:06:04 23 had a young assistant, Ms. Simmonds, at that time.

16:06:09 24 So those are the conversations we would have with
16:06:11 25 respect to the ESGR program. I had more conversation

16:06:16 1 with her as the J5 than I would -- as opposed to the
16:06:21 2 ESGR program.

16:06:29 3 Q. Do the Guards have members who volunteer as ESGR?

16:06:35 4 A. Well, the ESGR program is pretty much a one- or
16:06:41 5 two-person shop, so it depends primarily a lot for
16:06:45 6 activities and volunteers. So, you know, a lot of
16:06:48 7 volunteers both inside of the Guard and from the general
16:06:51 8 community at large, you could volunteer to support the
16:06:55 9 program.

16:07:21 10 MR. POTTER: Court's indulgence, Judge.

16:07:24 11 THE COURT: Yes.

16:07:25 12 (Pause)

16:07:25 13 BY MR. POTTER:

16:07:25 14 Q. Now, General, are you familiar with Baron Hignite?

16:07:31 15 A. Baron Hignite, yes, I am.

16:07:33 16 Q. Tell us how you're familiar with him.

16:07:35 17 A. At the juncture, I believe the first initial period
16:07:41 18 when we came at the board meeting, myself and General
16:07:44 19 Rivera, the ESGR program were -- had a huge void for a
16:07:48 20 number of years, and it was not filled. That position
16:07:53 21 was not filled.

16:07:54 22 A recommendation was made, I believe from Major
16:07:59 23 James, to hire Mrs. Morales for that particular program.

16:08:06 24 And I agreed. Because I thought it was a good fit.
16:08:08 25 She knew, she knew the program. She served as the HRO

16:08:13 1 for a number of years and knew the regulations, knew the
16:08:16 2 procedures and so forth. So I had no problem making
16:08:19 3 recommendations to hire her.

16:08:21 4 Q. Okay.

16:08:22 5 A. That information was passed on to Mr. Hignite, that
16:08:26 6 the choice for the Virgin Islands ESGR was Mrs. Morales.
16:08:34 7 That was my contact with him.

16:08:35 8 Q. Did you recall Mr. Hignite ever contacting you
16:08:41 9 again in 2010, September of 2010, regarding Sherrymae
16:08:50 10 Morales?

16:08:51 11 A. No. I didn't, no.

16:08:55 12 Q. Did Sherrymae Morales ever indicate to you that she
16:09:00 13 was interested in returning to the ESGR position?

16:09:06 14 A. I don't recall myself and Major Morales have any
16:09:11 15 such conversation.

16:09:16 16 Q. Now, in 2010, you were the chief of staff?
16:09:20 17 What was your position in 2010?

16:09:22 18 A. It depends, because I left the position of director
16:09:27 19 of joint staff in 2010.

16:09:31 20 Q. So in March of 2010?

16:09:32 21 A. In March of 2010, I would have still been serving
16:09:36 22 as director of the joint staff.

16:09:38 23 Q. And you say you left the Guard when?

16:09:40 24 A. In December of 2010.

16:09:43 25 Q. And why did you leave the Guard?

16:09:44 1 A. I was nominated by the Former Governor John
16:09:50 2 deJongh, Jr., to serve as director of the Virgin Islands
16:09:56 3 Emergency Management Agency, known as VITEEMA.
16:09:57 4 Q. And in 2010, do you recall when you actually left?
16:10:06 5 A. I sent out the general farewell notice, I think, on
16:10:12 6 December 3rd. They should have records of that. And I
16:10:19 7 officially joined the deJongh Administration in
16:10:24 8 January 6, 2010.
16:10:25 9 Q. And after you left, did you have any day-to-day
16:10:27 10 control of the Virgin Islands National Guard?
16:10:29 11 A. No, I did not. By leaving in 2010 --
16:10:32 12 THE COURT: Okay. No. Let's move on.
16:10:48 13 MR. POTTER: Court's indulgence?
16:10:49 14 THE COURT: Yes.
16:10:56 15 (Pause)
16:10:56 16 BY MR. POTTER:
16:10:56 17 Q. And between -- did you have any knowledge that
16:11:04 18 Morales was employed full-time with the National Guard,
16:11:10 19 Virgin Islands National Guard, and with the MPSC
16:11:17 20 performing -- or ESGR position?
16:11:20 21 MR. JUPITER: Objection. Asked and answered.
16:11:21 22 Leading.
16:11:22 23 THE COURT: Sustained.
16:11:24 24 MR. POTTER: That's all I have, Judge.
16:11:25 25 THE COURT: Attorney Jupiter?

16:11:28 1 CROSS-EXAMINATION

16:11:30 2 BY MR. JUPITER:

16:11:31 3 Q. Good afternoon.

16:11:32 4 A. Good afternoon.

16:11:43 5 Q. General Lewis, you were still the acting chief of
16:11:52 6 joint staff in, at the National Guard in September?

16:11:59 7 Specifically September 27, 2010?

16:12:03 8 A. September 2010?

16:12:05 9 Q. Yes.

16:12:05 10 A. No, I would have been the director of the joint
16:12:08 11 staff, not acting.

16:12:08 12 Q. Director, director of the joint staff?

16:12:12 13 A. Correct.

16:12:12 14 Q. Okay. And you recall -- well, first of all, every
16:12:19 15 year the National Guard would have an annual -- the
16:12:21 16 Virgin Islands National Guard would have an annual
16:12:23 17 leadership conference?

16:12:25 18 A. Yes.

16:12:28 19 Q. Okay. And they had one in September of 2010?

16:12:36 20 A. I believe they might have had one -- I don't know
16:12:41 21 which year, but either '09 or '010, Major Morales headed
16:12:49 22 up that particular leadership conference.

16:12:51 23 Q. Well, in '09 she was not, she was not employed with
16:12:55 24 the Virgin Islands National Guard as a military
16:13:01 25 technician, was she?

16:13:03 1 A. I wouldn't know. I would have to, again, defer
16:13:06 2 back to the records. I wouldn't know that off of my --
16:13:11 3 Q. Okay. And also you don't know -- this conversation
16:13:13 4 that you say you had with Major Morales, you don't know
16:13:16 5 what year you had that conversation, do you?
16:13:20 6 A. It would have had to been in 2010, I believe.
16:13:24 7 Q. Do you know?
16:13:26 8 A. Well, I don't know offhand. Again, records will
16:13:30 9 support that. But it would have had to been in 2010, I
16:13:33 10 believe, yes.
16:13:34 11 Q. And you're basing that off of what?
16:13:36 12 A. Basing that off of the knowledge that I held as the
16:13:43 13 director of the joint staff, and had interaction with
16:13:47 14 Major Morales.
16:13:48 15 Q. And you don't know what month it was, do you?
16:13:50 16 A. No, I can't recall what month it was.
16:13:53 17 Q. Okay. But you were her direct supervisor at that
16:13:57 18 time?
16:13:57 19 A. For -- yes.
16:13:58 20 Q. You were her direct supervisor from the time that
16:14:02 21 she was hired as a military tech to the time that you
16:14:05 22 left, correct?
16:14:06 23 A. Correct.
16:14:06 24 Q. And you also -- now, let me ask you this: Your
16:14:17 25 e-mail address would have been -- in September 2010

16:14:23 1 would have been Elton dot Lewis at US Army -- US dot
16:14:30 2 Army dot mil?

16:14:31 3 A. If that's what it says. I wouldn't recall it.

16:14:37 4 Q. Okay.

16:14:37 5 MR. JUPITER: I want you to take a look at what
16:14:39 6 I'm marking as Defendant's Exhibit Number 9 on your
16:14:45 7 screen.

16:14:49 8 (Defendant's Exhibit 9 marked for identification.)

16:14:51 9 Q. Can you see that?

16:14:52 10 A. Uhm-hmm.

16:14:54 11 Q. And can you tell me if your e-mail address appears
16:14:57 12 on there, on the "to" column?

16:15:14 13 A. Yes, I see my -- yes.

16:15:16 14 Q. Okay.

16:15:17 15 A. Yes, Army dot mil.

16:15:21 16 Q. Okay. And that's an e-mail from Baron Hignite,
16:15:25 17 isn't it?

16:15:25 18 A. Yes.

16:15:26 19 Q. Okay. Major Lewis, in September of 2010, didn't
16:15:31 20 Baron Hignite tell you that he was rehiring Sherry
16:15:35 21 Morales for the ESGR position?

16:15:39 22 A. I don't remember that conversation, as I said
16:15:42 23 earlier.

16:15:43 24 Q. Okay. Well, did he notify you by e-mail?

16:15:50 25 A. Well, he might have -- I mean, my address is

16:15:52 1 actually there. That doesn't guarantee that I had
16:15:56 2 received or even read the e-mail.

16:15:58 3 Q. Okay. So you're saying you don't think you
16:16:00 4 received this e-mail?

16:16:02 5 A. I'm not -- that's not what I'm saying. I'm saying
16:16:05 6 that my e-mail address is there, but this doesn't
16:16:09 7 guarantee that I actually saw or even read the e-mail.

16:16:15 8 Q. Would you read your e-mails?

16:16:17 9 A. I normally read my e-mails, yes.

16:16:19 10 Q. Weren't you aware at this time as to the status of
16:16:22 11 the ESGR position?

16:16:25 12 A. In what context?

16:16:27 13 Q. Were you aware that it was vacant?

16:16:30 14 A. In 2010?

16:16:33 15 Q. In September of 2010.

16:16:40 16 A. The position would have been vacant because Major
16:16:44 17 Morales was serving as the joint -- the joint strategic
16:16:50 18 planner.

16:16:50 19 Q. Okay. And with that position being vacant, there
16:16:54 20 is no one in the contract position to tend to the duties
16:16:57 21 that the ESGR contract person tends to, correct?

16:17:02 22 A. That might be so.

16:17:04 23 Q. All right. And that's something that, for
16:17:06 24 instance, just like in 2007, when it was vacant and
16:17:13 25 there was a void, as you remarked on direct, one of the

16:17:16 1 things you would do is have contact with Baron Hignite
16:17:21 2 about filling the position, correct?

16:17:23 3 A. Let me, let me be perfectly clear.

16:17:28 4 In 2007, when Morales was selected or nominated for
16:17:35 5 the position, I made it clear to Mr. Hignite that that
16:17:39 6 would have been -- that's a good fit. That is the only
16:17:42 7 conversation that I recall having with Mr. Hignite with
16:17:47 8 regards to hiring or rehiring of anyone else.

16:17:52 9 Q. Okay. And the reason you thought that she would be
16:17:56 10 a good fit is, number -- you were familiar with her
16:18:00 11 professionalism, right?

16:18:02 12 A. Correct.

16:18:03 13 Q. You were familiar with her writing abilities,
16:18:05 14 correct?

16:18:05 15 A. Correct.

16:18:06 16 Q. And you were familiar with her ability to work,
16:18:09 17 motivate people such as volunteers to work together,
16:18:12 18 correct?

16:18:12 19 A. And also aware of her number of years when she
16:18:16 20 served as the HRO person, which she would have great
16:18:21 21 in-depth and knowledge of the rules and regulations of
16:18:24 22 the program.

16:18:26 23 Q. Okay. You had no direct contact with the program,
16:18:30 24 did you?

16:18:30 25 A. No, I did not.

16:18:32 1 Q. And as you indicated before, you would not -- for
16:18:40 2 instance, you didn't attend ESGR activities, did you?

16:18:43 3 A. Very seldom, no, I did not.

16:18:48 4 Q. But nevertheless, you were familiar with the fact
16:18:50 5 that the years preceding here there was a void, right?

16:18:55 6 A. Correct. That's the whole purpose that she, that
16:19:02 7 she was hired to begin with, because of the void that
16:19:04 8 had been with the program for a number of years.

16:19:07 9 Q. And after she came there, all of a sudden things
16:19:10 10 started happening, correct?

16:19:12 11 A. Again, let me be perfectly clear.

16:19:15 12 Q. Okay.

16:19:15 13 A. Major Morales is a very direct person. She is
16:19:20 14 bright. Her oral and her written communications are
16:19:23 15 excellent. And I had no issues with her performance for
16:19:29 16 duties when she served as the -- of the J5 or during
16:19:35 17 that period of time.

16:19:36 18 Q. Okay. And you would be the one to assign duties to
16:19:39 19 her, right?

16:19:40 20 A. That's correct.

16:19:40 21 Q. Okay. And every duty you assigned to her, she
16:19:43 22 performed, correct?

16:19:44 23 A. Again, again, I just want to be clear, that Major
16:19:50 24 Morales is, again, a very competent person. Every
16:19:54 25 assignment that I had provided to her she did, and she

16:19:59 1 did it in an excellent manner.

16:20:01 2 Q. Okay. You come in, when you were working at the
16:20:04 3 National Guard -- probably today, too, but when you were
16:20:08 4 working at the National Guard, you would come in before
16:20:11 5 8:00, would you?

16:20:13 6 A. I normally was in my office every day at 6:30 in
16:20:16 7 the morning.

16:20:17 8 Q. And Mrs. Morales would come in, as you say, 7:30,
16:20:22 9 and maybe even earlier than that?

16:20:24 10 A. The majority of my time, to my recollection,
16:20:29 11 Mrs. Morales would be around 7:30, yeah, 7:30 in the
16:20:33 12 morning.

16:20:33 13 Q. And, General Lewis, you would work till late at
16:20:35 14 night, wouldn't you?

16:20:36 15 A. Correct.

16:20:37 16 Q. And Mrs. Morales would work until late at night,
16:20:40 17 wouldn't she?

16:20:41 18 A. Occasionally, more time than often, yeah, she
16:20:45 19 worked very late at night, yes.

16:20:47 20 Q. So it wouldn't be uncommon for her to have 12-,
16:20:51 21 13-, 14-hour days at that office?

16:20:53 22 A. No, not uncommon.

16:20:57 23 Q. And you -- and that's one of the -- and, in fact,
16:20:59 24 you indicated that when Carolyn Adams and this position
16:21:06 25 became open, that she expressed some interest in this

16:21:09 1 position?

16:21:09 2 A. Correct.

16:21:09 3 Q. But, in fact, you also expressed some interest in

16:21:12 4 her taking that position, correct?

16:21:14 5 A. Yeah, I can do that. But again, they still have to

16:21:16 6 go through a hiring process.

16:21:18 7 Q. Right. But you were right under General Rivera,

16:21:22 8 right?

16:21:23 9 A. That doesn't matter.

16:21:24 10 Q. Okay. All right. Okay.

16:21:27 11 Did you make any recommendations to General Rivera?

16:21:31 12 A. I would have made a recommendation to General

16:21:35 13 Rivera, yes.

16:21:43 14 Q. Now, did the oversight of this contract position

16:21:46 15 ever go to Linda Cills while you were there?

16:21:49 16 A. I don't recall or know. Again, those are personal

16:21:56 17 directorates, and most of those contract stuff probably

16:22:01 18 would not have filtered through me. They would have

16:22:03 19 been filtered through Colonel Cills as the personal

16:22:10 20 directorate.

16:22:11 21 Q. You held staff meetings every Tuesday, didn't you?

16:22:14 22 A. I held staff meetings every day --

16:22:17 23 Q. Okay.

16:22:17 24 A. -- in fact, at 8:00.

16:22:21 25 Q. Okay.

16:22:22 1 A. And then there was a general staff meeting for the
16:22:25 2 entire staff every Tuesday.

16:22:26 3 Q. Okay. And general staff meetings, your staff
16:22:28 4 members were required to submit -- well, heads of
16:22:33 5 certain departments were required to submit briefings,
16:22:36 6 right?

16:22:36 7 A. Briefing slides.

16:22:40 8 Q. Briefing slides, correct?

16:22:42 9 A. Yes.

16:22:42 10 Q. And those were submitted to, initially, is it your
16:22:45 11 aide? I don't know the official, Mrs. --

16:22:50 12 A. They would have been submitted to one or two
16:22:52 13 persons. One would have been Chief Mitchell, or the
16:22:56 14 other person would have been Sergeant --

16:22:59 15 Q. Zera Louis?

16:23:01 16 A. Zera Louis.

16:23:20 17 Q. Do you remember speaking with Mrs. Morales about
16:23:23 18 her replacement of the ESGR position?

16:23:25 19 A. There was some discussion, I believe, with regards
16:23:29 20 to that, and the person's name that came up in that
16:23:33 21 process was Mrs., I think, Janice Aelleyne.

16:23:40 22 Q. Okay.

16:23:40 23 A. Yes.

16:23:41 24 Q. And do you -- this Janice Aelleyne was the wife of,
16:23:45 25 at that time, Major Aelleyne, correct?

16:23:47 1 A. Correct.

16:23:48 2 Q. All right. Major Aelleyne had been asking you to

16:23:51 3 leave, correct?

16:23:52 4 A. To?

16:23:53 5 Q. To leave, to relocate to be with his wife in

16:24:00 6 Maryland, correct?

16:24:01 7 A. He -- again, my best recollection, I believe that,

16:24:04 8 yes, he wanted to relocate back to Maryland or the

16:24:10 9 Washington, DC, area.

16:24:13 10 Q. This was for quite some time, correct?

16:24:15 11 A. Correct.

16:24:16 12 Q. Major Aelleyne, though, was someone who was

16:24:18 13 essential to your plans in what you were trying to do at

16:24:22 14 the Guard; is that correct?

16:24:23 15 A. That's correct.

16:24:23 16 Q. And you wanted him to stay, correct?

16:24:25 17 A. I requested of him to stay. But that is his

16:24:29 18 choice.

16:24:29 19 Q. You were his superior officer, right?

16:24:31 20 A. I was his superior officer, yes. But, again,

16:24:41 21 soldiers have choices.

16:24:44 22 Q. Did there come a time that you discussed with Major

16:24:46 23 Aelleyne replacing Mrs. Morales with his wife,

16:24:51 24 Mrs. Aelleyne?

16:24:52 25 A. I don't recall that. Again, again, Mrs. Aelleyne

16:24:56 1 applied for the position and she would have had to go
16:24:59 2 through the same process just like anybody else applying
16:25:04 3 for position. There was no favoritism or no
16:25:08 4 preferential treatment to one or the other.

16:25:09 5 Q. Were you accused of favoritism?

16:25:12 6 A. If I was?

16:25:13 7 Q. Yes.

16:25:14 8 A. I --

16:25:15 9 MR. POTTER: Objection, Your Honor.

16:25:16 10 THE COURT: Sustained.

16:25:17 11 THE WITNESS: I've been accused of many things.

16:25:19 12 THE COURT: Sustained.

16:25:20 13 BY MR. JUPITER:

16:25:21 14 Q. Did -- is there an investigation into this matter
16:25:28 15 where there was -- where you were accused of doing
16:25:31 16 something inappropriate?

16:25:32 17 MR. POTTER: Objection, Your Honor.

16:25:33 18 THE COURT: Sustained. 403.

16:25:38 19 BY MR. JUPITER:

16:25:39 20 Q. Now, with regard to Mrs. Aelleyne, do you recall in
16:25:53 21 -- do you recall asking Major Morales to stay on as ESGR
16:25:59 22 until Mrs. Aelleyne could get here?

16:26:03 23 A. What time period are we talking about?

16:26:11 24 Q. Before you left in -- shortly before you left in
16:26:13 25 2010?

16:26:19 1 A. And your question is, again?

16:26:22 2 Q. Did you ask Mrs. Morales to stay on as the ESGR
16:26:25 3 person until Mrs. Aelleyne could leave -- could get
16:26:28 4 here?

16:26:28 5 A. It would have been impossible for me to do that.
16:26:32 6 Major Morales was a J5 --

16:26:35 7 Q. Okay.

16:26:35 8 A. -- at that time, and that would have been a clear
16:26:38 9 conflict.

16:26:38 10 Q. Okay. So any -- and so as far as you know, the
16:26:55 11 ESGR position would have been vacant from March -- from
16:27:10 12 when Mrs. Morales came on as a military technician, all
16:27:14 13 the way until you left at the end of 2010?

16:27:21 14 A. I would imagine yes, it would have been until we
16:27:25 15 find some suitable person to fill that position. That
16:27:28 16 would be my assumption.

16:27:31 17 Q. Did you look -- did Mrs. Morales bring a number of
16:27:35 18 people for you to try to see if you would recommend
16:27:37 19 them?

16:27:42 20 A. I don't really -- she may or may -- she may or may
16:27:47 21 not. I don't really recall that. I know that there was
16:27:49 22 one young lady, Ms. Simmonds, that was one of her
16:27:54 23 colleagues. I believe she -- she made a recommendation
16:27:57 24 of her, yes.

16:27:58 25 Q. Okay. And that was shortly after she got there,

16:28:01 1 right?

16:28:05 2 A. Shortly, who?

16:28:07 3 Q. Shortly after Mrs. Morales started the military
16:28:13 4 tech position, she made the recommendation for
16:28:17 5 Mrs. Simmonds?

16:28:17 6 A. I don't recall.

16:28:18 7 Q. The ESGR wasn't that important to you, was it,
16:28:21 8 General Lewis?

16:28:22 9 A. No -- I mean, it's an important position, but my
16:28:25 10 focus was more on my other duties with regards, with
16:28:30 11 regards to troops and troop movements and troop
16:28:33 12 operations. So I didn't really focus on the ESGR on a
16:28:37 13 daily basis, like I did the operations.

16:28:43 14 MR. JUPITER: Thank you, General.

16:28:44 15 THE COURT: Any redirect?

16:28:45 16 MR. POTTER: Yes, Judge.

16:28:58 17 REDIRECT EXAMINATION

16:28:59 18 BY MR. POTTER:

16:28:59 19 Q. General Lewis, you were shown an e-mail -- you were
16:29:10 20 shown an e-mail where you were CC'd on the e-mail,
16:29:18 21 correct?

16:29:19 22 A. It's a little bit -- it's a little bit blurry, but
16:29:23 23 I think I can make it out.

16:29:26 24 Q. When is the first time you saw that e-mail, sir?

16:29:29 25 A. Today.

16:29:35 1 Q. Now, the e-mail is dated September 27th of 2010.

16:29:44 2 During that time, did Sherrymae Morales come to you and

16:29:52 3 say she just got rehired as the ESGR?

16:29:56 4 MR. JUPITER: Objection to leading, Your Honor.

16:29:57 5 THE COURT: Sustained.

16:29:57 6 THE WITNESS: No --

16:29:58 7 THE COURT: Sustained --

16:30:00 8 THE WITNESS: -- no, she did not.

16:30:02 9 THE COURT: Stop.

16:30:03 10 Next question.

16:30:04 11 BY MR. POTTER:

16:30:05 12 Q. Did you have any -- after September 27th, 2010, did

16:30:08 13 you have any conversations with Mr. Morales regarding

16:30:14 14 the ESGR position?

16:30:22 15 MR. POTTER: Let me rephrase the question.

16:30:22 16 BY MR. POTTER:

16:30:24 17 Q. Any --

16:30:27 18 MR. JUPITER: Objection, Your Honor. The

16:30:28 19 witness hasn't answered.

16:30:31 20 THE COURT: Rephrase the question. Go ahead.

16:30:32 21 BY MR. POTTER:

16:30:32 22 Q. Did you have any conversation with Sherrymae

16:30:34 23 Morales regarding this e-mail?

16:30:37 24 A. No, because this is the first time I'm seeing this

16:30:40 25 e-mail. I have no knowledge of this e-mail.

16:30:59 1 Q. You were Sherrymae Morales's supervisor as the G5?

16:31:03 2 A. As the J5, correct.

16:31:05 3 Q. As the J5.

16:31:06 4 While you were her supervisor as a J5, did she come
16:31:09 5 to you and reference her rehire as the ESGR?

16:31:19 6 MR. JUPITER: Objection --

16:31:19 7 THE WITNESS: She did not.

16:31:21 8 MR. JUPITER: Objection. Move to strike.

16:31:24 9 THE COURT: All right. Sustained.

16:31:30 10 BY MR. POTTER:

16:31:30 11 Q. Did she have any conversation with you about --
16:31:32 12 about this e-mail?

16:31:33 13 MR. JUPITER: Your Honor --

16:31:34 14 THE COURT: Sustained.

16:31:35 15 MR. POTTER: It's a different --

16:31:47 16 THE COURT: Let's move on.

16:31:48 17 MR. POTTER: Yes, Judge.

16:31:49 18 BY MR. POTTER:

16:31:49 19 Q. Do employees at the Guard volunteer to do ESGR
16:31:52 20 functions?

16:31:53 21 A. Yes.

16:31:54 22 Q. Is that common?

16:31:55 23 A. Yes, that's common.

16:32:05 24 Q. After Sherrymae Morales was hired as the military
16:32:12 25 tech in March of 2010, did you personally observe her

16:32:19 1 doing any volunteer ESGR work?

16:32:25 2 A. No. I had Major Morales pretty busy doing J5
16:32:32 3 functions, functionalities.

16:32:38 4 Q. You mentioned that Mrs. Morales worked long hours
16:32:47 5 at the time. Do you know what she was working on?

16:32:53 6 A. Well, she would have been working on projects that
16:32:56 7 was assigned to her by me with regards -- because at
16:32:59 8 that time we were doing a lot of realignment and a lot
16:33:03 9 of policy changes within the National Guard.

16:33:15 10 Q. Could you, as the chief of staff, authorize a
16:33:18 11 full-time military tech under your supervision to be
16:33:25 12 employed in another full-time 9:00 to 5:00 position?

16:33:34 13 A. Absolutely not. I don't have that authority.

16:33:47 14 Q. Counsel asked you whether or not the ESGR position
16:33:51 15 was -- based on your knowledge, whether the ESGR
16:33:55 16 position was open from March to whenever it was this
16:34:04 17 e-mail, this September 27th e-mail.

16:34:16 18 Do you keep close track -- as the chief of staff,
16:34:19 19 do you keep close track of the ESGR position and who
16:34:25 20 fills it?

16:34:26 21 A. No.

16:34:27 22 Q. And have there been periods of time when the ESGR
16:34:32 23 position is open? That nobody fills it?

16:34:38 24 A. Yes, there was -- it was -- originally the position
16:34:43 25 was dormant for quite some time.

16:34:45 1 MR. POTTER: Court's indulgence, Judge?

16:34:48 2 THE COURT: Yes.

16:34:48 3 (Pause)

16:34:48 4 BY MR. POTTER:

16:35:03 5 Q. One final question, General.

16:35:06 6 In your position as Sherrymae Morales's supervisor,
16:35:10 7 what, if anything, would you have done if you found she
16:35:12 8 had another full-time position with the same hours as
16:35:16 9 your J5?

16:35:19 10 MR. JUPITER: Objection, Your Honor.

16:35:20 11 THE COURT: Sustained.

16:35:21 12 MR. POTTER: No further questions, Your Honor.

16:35:24 13 THE COURT: General Lewis, thank you.

16:35:28 14 MR. JUPITER: Can I have a --

16:35:29 15 THE COURT: No. He didn't go beyond.

16:35:31 16 General Lewis, thank you for your testimony.

16:35:36 17 You may step down.

16:35:37 18 THE WITNESS: Thank you, Your Honor.

16:35:39 19 (Witness withdrew from stand.)

16:35:39 20 THE COURT: Next witness.

16:35:40 21 MR. POTTER: Your Honor, the government calls

16:35:42 22 Renaldo Rivera.

16:36:22 23 THE CLERK: Please step into the witness box.

16:36:30 24 Please raise your right hand to take the oath.

16:36:32 25 (Witness sworn.)

16:36:34 1 THE WITNESS: I do.

16:36:35 2 THEREUPON, RENALDO RIVERA, having been duly
16:36:38 3 sworn, was examined and testified as follows:

16:36:38 4 DIRECT EXAMINATION

16:36:40 5 BY MR. POTTER:

16:36:41 6 Q. Good afternoon, sir.

16:36:42 7 A. Good afternoon.

16:36:43 8 Q. Could you give us your full name for the record,
16:36:46 9 please, and spell your first and your last name for the
16:36:51 10 court reporter?

16:36:52 11 A. Renaldo Rivera, R-e-n-a-l-d-o, R-i-v-e-r-a.

16:36:59 12 Q. And how are you employed, sir?

16:37:02 13 A. I'm employed as the adjutant general for the Virgin
16:37:06 14 Islands National Guard.

16:37:07 15 Q. And how long have you held that position?

16:37:12 16 A. Eight years, three months.

16:37:17 17 Q. And how long have you been a member of the Virgin
16:37:21 18 Islands National Guard?

16:37:23 19 A. As of 14 July, July next month it will be 31 years,
16:37:33 20 sir.

16:37:34 21 Q. And how long have you been in the military, period?

16:37:42 22 A. I had two years in Vietnam, active duty in Vietnam,
16:37:50 23 plus these 31; about 34 years in the military, total.

16:38:04 24 Q. When you say you are the adjutant general of the
16:38:07 25 Virgin Islands National Guard, tell us what the

16:38:13 1 Virgin Islands National Guard is.

16:38:15 2 A. The Virgin Islands National Guard consists of the
16:38:17 3 army and air guard units. There are 845 army members
16:38:26 4 and 67 air guard members that make up the Virgin Islands
16:38:32 5 National Guard.

16:38:32 6 Q. And how does the Virgin Islands Guard -- how does
16:38:38 7 the Virgin Islands National Guard receive its funding?

16:38:41 8 A. It receives its funding through the federal system
16:38:45 9 at the tune of \$45 million, and there is a local
16:38:56 10 appropriation of \$1.3 million.

16:38:58 11 Q. Back in between -- 2011, what was the funding for
16:39:02 12 the National Guard?

16:39:03 13 A. Approximately \$45 million, sir.

16:39:12 14 Q. Are you familiar, sir, with a position within the
16:39:16 15 Guard known as military technician?

16:39:17 16 A. Yes, I am.

16:39:18 17 Q. And tell us what the military technician does.

16:39:21 18 A. The military technicians are really the backbone of
16:39:28 19 the National Guard, full-time. They are made up of
16:39:37 20 GS-7's all the way through 15, and they make up the wage
16:39:44 21 rates. They take care of getting -- of putting the
16:39:47 22 Guard together for the weekend, because we have what you
16:39:49 23 call weekend soldiers, M-Day soldiers.

16:39:58 24 Q. What's a GS-5?

16:40:00 25 A. Usually a secretary; and a GS-15 would be higher.

16:40:05 1 Q. Now for the position of military tech, what is the
16:40:09 2 regular working hours for a military tech person?
16:40:15 3 A. The regular working hours is 8:00 through 5:00,
16:40:20 4 Mondays through Fridays.
16:40:29 5 Q. Now, do you know Sherrymae Morales?
16:40:32 6 A. Yes, I do.
16:40:33 7 Q. And tell us how you know Sherrymae Morales.
16:40:36 8 A. I've known her for many, many years. From the time
16:40:39 9 she came into the Virgin Islands National Guard as a
16:40:42 10 private, as she became a lieutenant, a captain, a first
16:40:47 11 lieutenant and captain and a major. That's how long I
16:40:50 12 know her.
16:40:50 13 Q. What would you say her level of competence is?
16:40:53 14 A. Excellent. She is one of the best workers -- I
16:40:57 15 would put her against anybody. She's pretty good.
16:41:01 16 Q. What would you say her scope of knowledge is with
16:41:04 17 respect to the rules and regulations of Guard
16:41:07 18 membership?
16:41:07 19 A. Well-versed.
16:41:13 20 Q. Did she ever serve as your HRO, human resource
16:41:17 21 officer?
16:41:18 22 A. Not as my HRO. She served as HRO, but not while I
16:41:24 23 was there as the adjutant general.
16:41:26 24 Q. Okay. And what do the HRO or the human resource
16:41:32 25 officers, what are their duties?

16:41:35 1 MR. JUPITER: Objection as to relevance, Your
16:41:38 2 Honor.

16:41:38 3 THE COURT: Okay. Overruled.

16:41:41 4 THE WITNESS: The HRO is the person responsible
16:41:45 5 to ensure that we have all of the resources available in
16:41:49 6 personnel, to bring them into different sorts of status,
16:41:56 7 such as AGR, Acting Guard Reserve, or military
16:42:03 8 technician.

16:42:07 9 BY MR. POTTER:

16:42:07 10 Q. Let me take your -- draw your attention back to
16:42:10 11 2007. Do you -- were you familiar with Sherrymae
16:42:18 12 Morales in 2007, what her job was?

16:42:20 13 A. Yes, I was.

16:42:21 14 Q. And tell us what position she held in 2007.

16:42:29 15 A. In 2007, she was the ESGR coordinator for the
16:42:33 16 Virgin Islands National Guard.

16:42:35 17 Q. Now, is that a position within the Guard or is that
16:42:38 18 a contract position?

16:42:39 19 A. It's a contract position.

16:42:43 20 Q. And who is the contracting agency?

16:42:47 21 A. I would be guessing. I don't know who the contract
16:42:52 22 is.

16:42:52 23 Q. Are you familiar with the MPSC?

16:42:56 24 MR. JUPITER: Objection, Your Honor, to
16:42:57 25 leading. And he said he doesn't know.

16:43:04 1 THE COURT: Sustained.

16:43:05 2 BY MR. POTTER:

16:43:05 3 Q. What is the MPSC?

16:43:07 4 A. I don't know, sir.

16:43:13 5 Q. Are you at all familiar with the name Military
16:43:23 6 Personnel --

16:43:23 7 MR. JUPITER: Your Honor --

16:43:24 8 THE COURT: No.

16:43:26 9 MR. POTTER: Okay, Judge.

16:43:35 10 BY MR. POTTER:

16:43:36 11 Q. Now, you said you were familiar with Sherrymae
16:43:38 12 Morales in 2007?

16:43:39 13 A. Yes, sir.

16:43:44 14 Q. And tell us again how you were familiar with her?

16:43:47 15 A. She came recommended for the ESGR position by, at
16:43:53 16 that time, Colonel Elton Lewis, who was the director of
16:43:57 17 the joint staff.

16:44:04 18 Q. And did she in fact fill that position?

16:44:06 19 A. Yes, but with a caveat, sir.

16:44:11 20 Q. Let me ask my question next.

16:44:20 21 Now, did there come a time that you had a -- that
16:44:22 22 you recall having a conversation with Sherrymae Morales
16:44:25 23 regarding her ESGR position?

16:44:31 24 A. I had many, many conversations with her, sir.

16:44:36 25 Q. In 2010?

16:44:39 1 A. I don't recall having one with her, and what
16:44:44 2 specific topic we discussed, because there were many.

16:44:54 3 Q. Do you know when Sherrymae Morales was hired back
16:44:58 4 into the Guard as a full-time member of the National
16:45:01 5 Guard?

16:45:05 6 A. The year escapes me, sir, but I do know that she
16:45:09 7 wanted to become a technician. And in becoming a
16:45:15 8 technician, she had to go through a background check --

16:45:17 9 Q. Well, before you say that --

16:45:19 10 A. Sorry.

16:45:19 11 Q. You said -- is this a conversation that you had
16:45:24 12 with Sherrymae Morales?

16:45:26 13 A. One of the conversations, yes, sir.

16:45:28 14 Q. Okay. So go ahead.

16:45:30 15 A. And because of her --

16:45:33 16 MR. JUPITER: Your Honor, I object.

16:45:35 17 THE COURT: Overruled.

16:45:37 18 MR. JUPITER: Same 403 issue.

16:45:41 19 THE COURT: All right. I haven't heard what
16:45:42 20 the witness is saying.

16:45:44 21 THE WITNESS: Because she wanted to become a
16:45:50 22 temporary technician, which we hired her as, she had to
16:45:53 23 go and get a background check to be back on the force --

16:45:57 24 THE COURT: All right. Stop.

16:45:59 25 Next question.

16:45:59 1 THE WITNESS: Yes, sir.

16:46:00 2 BY MR. POTTER:

16:46:00 3 Q. Well, aside from that issue, what other
16:46:05 4 conversation did you have with her?

16:46:10 5 Aside from the background issue, did she ask you
16:46:13 6 anything else regarding coming back into the Guard?

16:46:16 7 A. Yes. She asked if I could promote her to
16:46:19 8 lieutenant-colonel.

16:46:24 9 Q. And what, if any, response did you?

16:46:28 10 A. I indicated at the time that since I didn't receive
16:46:32 11 a favorable clearance from the agency that does it, I
16:46:36 12 couldn't promote her.

16:46:50 13 Q. Now, prior to her coming into the Guard, when she
16:46:56 14 was still in her ESGR position -- well, when she was
16:47:02 15 still in her ESGR position, did you have any
16:47:06 16 conversation with her or did she have any conversation
16:47:08 17 with you regarding her desire to come back into the
16:47:11 18 Guard?

16:47:12 19 A. Yes, sir.

16:47:14 20 Q. Now, I know you mentioned an issue that got an
16:47:23 21 objection sustained --

16:47:25 22 MR. JUPITER: Your Honor --

16:47:26 23 BY MR. POTTER:

16:47:26 24 Q. I'm asking you, any other conversation other than
16:47:29 25 that, that you told her regarding her desire to come

16:47:35 1 back into the National Guard?

16:47:36 2 A. That was the background check.

16:47:37 3 Q. Was there anything else?

16:47:40 4 A. Not that I recall, sir.

16:47:41 5 Q. Okay. Was she, in fact, hired back into the

16:47:54 6 National Guard?

16:47:54 7 A. Yes.

16:47:56 8 Q. Do you know approximately when that was, sir?

16:48:07 9 A. No, sir.

16:48:09 10 Q. And when she came in full-time to the National

16:48:12 11 Guard, do you know who her supervisor was?

16:48:14 12 A. At the time it was Elton Lewis.

16:48:18 13 Q. And would you know what her hours of work were when

16:48:24 14 she came into the Guard?

16:48:25 15 A. 8:00 to 5:00; 8:00 a.m. to 5:00 p.m.

16:48:29 16 Q. And what days of the week?

16:48:30 17 A. Mondays through Fridays.

16:48:43 18 Q. And, sir, do you know what happened with respect to

16:48:47 19 her ESGR position once she got hired full-time, as a

16:48:51 20 National Guard full-time person?

16:48:53 21 A. Yes, sir. In order for her to become the

16:48:57 22 technician, she had to --

16:48:59 23 MR. JUPITER: Objection.

16:49:00 24 THE WITNESS: -- resign --

16:49:02 25 MR. JUPITER: Objection, Your Honor.

16:49:03 1 THE COURT: Overruled.

16:49:04 2 THE WITNESS: -- she had to resign the ESGR
16:49:06 3 position, which she did.

16:49:08 4 BY MR. POTTER:

16:49:09 5 Q. Which she --

16:49:11 6 A. She did.

16:49:17 7 Q. And how do you know she resigned the ESGR position?

16:49:21 8 A. I made sure that I instructed the JAG, Marise
16:49:29 9 James, to make sure she has these, this piece of
16:49:33 10 paperwork. And it was then confirmed that she did
16:49:38 11 resign from the ESGR.

16:49:40 12 Q. Do you know when it was that she resigned?

16:49:44 13 A. What point?

16:49:47 14 Q. Yes, sir?

16:50:00 15 A. I don't, no, sir.

16:50:01 16 Q. And are you aware whether or not she was ever
16:50:05 17 rehired in the ESGR position -- contract position?

16:50:08 18 A. Not until about a year later, I found out.

16:50:18 19 Q. And when you found out that she was still employed
16:50:22 20 in the ESGR position, what did you do?

16:50:27 21 A. I immediately instructed the then-director of joint
16:50:34 22 staff, Aubrey Ruan, to draft up a letter, because, you
16:50:39 23 know, to initiate the investigation to find out what was
16:50:43 24 wrong -- what went wrong.

16:50:49 25 Q. And why did you find a need to do that, sir?

16:50:53 1 A. The reason why I found it necessary to do that is
16:50:59 2 because you couldn't be employed as a, on a contractor
16:51:05 3 and a full-time job. You have to have one employer.

16:51:32 4 MR. POTTER: Court's indulgence, Judge?

16:51:33 5 THE COURT: Yes.

16:51:41 6 (Pause)

16:51:41 7 MR. POTTER: No further questions of the
16:51:43 8 witness at the time, Your Honor.

16:51:45 9 THE COURT: Attorney Jupiter.

16:51:48 10 CROSS-EXAMINATION

16:51:48 11 BY MR. JUPITER:

16:51:48 12 Q. Good afternoon.

16:51:49 13 A. Good afternoon, sir.

16:51:49 14 Q. You had very limited contact with the ESGR
16:51:52 15 position, do you?

16:51:53 16 A. Very little.

16:51:54 17 Q. Okay. And at the time in 2010, specifically in
16:52:04 18 April, March, April of 2010, Elton Lewis was working as
16:52:11 19 the director of the joint staff, correct?

16:52:13 20 A. I believe so.

16:52:14 21 Q. He -- okay. When he was working -- and please
16:52:17 22 repeat the correct name for me. Is it director of joint
16:52:21 23 staff?

16:52:21 24 A. Director of joint staff.

16:52:22 25 Q. Okay. I got it right.

16:52:23 1 At the time that he did work in that position, he
16:52:26 2 worked under you, right?
16:52:27 3 A. Correct.
16:52:27 4 Q. He reported to you, correct?
16:52:29 5 A. Correct.
16:52:29 6 Q. Okay. And he directly supervised Mrs. Morales,
16:52:34 7 correct?
16:52:34 8 A. Yes.
16:52:34 9 Q. But Mrs. Morales also did things for you, correct?
16:52:37 10 A. A lot of things.
16:52:38 11 Q. She would write letters for you?
16:52:39 12 A. Correct.
16:52:40 13 Q. She would write speeches for you?
16:52:41 14 A. Correct.
16:52:42 15 Q. And she also would get you -- she also would get
16:52:45 16 you involved in some of these ESGR stuff, right?
16:52:49 17 A. Invited me to some of the events, yes.
16:52:53 18 Q. All right. And Mrs. Morales -- but you didn't have
16:52:59 19 direct contact with her very often while she was a
16:53:02 20 military technician, right?
16:53:04 21 A. Right.
16:53:04 22 Q. And you didn't have direct contact with her while
16:53:07 23 she was in the ESGR position, except for events she
16:53:11 24 invited you into?
16:53:12 25 A. Correct.

16:53:16 1 Q. Okay. Now with regard to military technicians, as
16:53:19 2 you say, they're the backbone of the operations. You
16:53:23 3 rely heavily on them, right?

16:53:25 4 A. Yes, sir.

16:53:26 5 Q. And you, General Lewis, you all, when you were with
16:53:29 6 the Guard, you all would work long hours, correct?

16:53:32 7 A. Yes, sir.

16:53:32 8 Q. You still do work long hours, right?

16:53:35 9 A. Like today.

16:53:36 10 Q. Okay. And Mrs. Morales would work long hours,
16:53:40 11 correct?

16:53:42 12 A. If it was necessary, yes.

16:53:43 13 Q. Okay. And, in fact, General Lewis can vary a
16:53:52 14 military technician's schedule, can he?

16:53:55 15 A. As the director, yes, he can.

16:53:57 16 Q. Okay. And as long as the military technician is
16:54:01 17 working at least 40 hours, General Lewis has discretion
16:54:05 18 to fix those hours, doesn't he?

16:54:08 19 MR. POTTER: Objection, Judge.

16:54:09 20 THE COURT: Overruled.

16:54:12 21 THE WITNESS: Yes. But there's a caveat to
16:54:16 22 that, sir.

16:54:17 23 BY MR. JUPITER:

16:54:17 24 Q. Okay. Now, you indicated that you instructed
16:54:27 25 Mrs. -- instructed Marise James, that's the JAG,

16:54:32 1 correct?

16:54:32 2 A. Correct.

16:54:33 3 Q. -- that Mrs. Morales resigned, correct?

16:54:35 4 A. Correct.

16:54:35 5 Q. But you don't know when that conversation took
16:54:38 6 place, do you?

16:54:39 7 A. No. But it did take place.

16:54:41 8 Q. And you don't know when Mrs. Morales was hired as
16:54:43 9 military technician, do you?

16:54:45 10 A. Unless I have the record in front of me, I can't
16:54:52 11 tell you the date, sir.

16:54:54 12 Q. Okay. Now you also mentioned that you instructed
16:54:59 13 Aubrey Ruan immediately, when you found out that
16:55:03 14 Mr. Morales had both the contract position and the
16:55:06 15 military tech position; is that right?

16:55:09 16 A. Yes, sir.

16:55:11 17 Q. Say that again?

16:55:12 18 A. Yes, sir.

16:55:12 19 Q. Okay. Didn't Aubrey Ruan contact you in June of
16:55:24 20 2011 about this issue?

16:55:32 21 A. He may have.

16:55:32 22 Q. And isn't it a fact that you didn't get back to
16:55:35 23 Aubrey Ruan about whether or not you were aware of
16:55:40 24 Mrs. Morales holding those two positions until August?

16:55:45 25 A. That is not a fact.

16:55:47 1 Q. So if someone came and testified that -- if
16:55:51 2 Aubrey Ruan came and testified to that, he would be
16:55:53 3 lying?

16:55:54 4 THE COURT: No. Stop.

16:55:55 5 MR. POTTER: Objection.

16:55:56 6 THE COURT: Sustained.

16:55:58 7 Next question.

16:56:13 8 BY MR. JUPITER:

16:56:13 9 Q. You never worked as HRO, did you?

16:56:16 10 A. Never.

16:56:16 11 Q. You -- with regard to Mrs. Morales working on
16:56:30 12 assignments as a military technician, do you have any
16:56:36 13 information that she worked any less than 80 hours per
16:56:39 14 week (sic) as a military technician?

16:56:43 15 A. I don't have any information on that, sir.

16:56:45 16 Q. From the time that she started to the time that she
16:56:48 17 left?

16:56:48 18 A. She had to work those 80 hours, but I don't have
16:56:53 19 any record to indicate that she worked less hours than
16:56:56 20 that, sir.

16:57:16 21 MR. JUPITER: Beg the Court's indulgence, sir.

16:57:19 22 THE COURT: Yes.

16:57:21 23 (Pause)

16:57:21 24 MR. JUPITER: No further questions, Your Honor.

16:57:22 25 THE COURT: Any redirect?

16:57:26 1 REDIRECT EXAMINATION

16:57:26 2 BY MR. POTTER:

16:57:27 3 Q. General, what did you think -- you said that
16:57:29 4 Morales invited you to ESGR functions. What do you
16:57:34 5 think her role was at the ESGR function?

16:57:40 6 A. Volunteer at the time.

16:57:48 7 Q. Did she say or do anything to let you believe that
16:57:56 8 she was being paid for attending that function?

16:58:01 9 A. No, sir.

16:58:11 10 Q. Did she ever tell you that she's the ESGR
16:58:14 11 coordinator?

16:58:16 12 A. When, sir?

16:58:17 13 Q. After she, after she was hired as a full-time
16:58:20 14 military tech?

16:58:21 15 A. No.

16:58:28 16 Q. And if she had told you that, sir, what, if
16:58:31 17 anything, would you have done as the TAG -- the head of
16:58:35 18 the Virgin Islands National Guard?

16:58:37 19 MR. JUPITER: Objection.

16:58:38 20 THE COURT: No, that's sustained.

16:58:40 21 Let's move on.

16:58:41 22 BY MR. POTTER:

16:58:41 23 Q. General, let me show you what's been marked as
16:58:44 24 Government Exhibit 1.2, and ask you -- well, let me ask
16:58:59 25 you, what, if anything -- you indicated you needed to

16:59:02 1 see a document that would help you to recollect when
16:59:05 2 Mrs. Morales was hired on board. What, if anything,
16:59:08 3 would assist you in your recollection?

16:59:14 4 A. One of the forms that we use to hire the
16:59:18 5 technicians.

16:59:21 6 MR. POTTER: Let me show you what's been
16:59:22 7 admitted as Government's Exhibit Number 1.2 and ask you
16:59:30 8 if you recognize that.

16:59:35 9 THE WITNESS: Can I move this, or you can move
16:59:39 10 it?

17:00:04 11 Yes, this is a certification of personnel action.

17:00:09 12 BY MR. POTTER:

17:00:09 13 Q. Based on Exhibit 1.2, can you tell us when
17:00:13 14 Mrs. Morales started working at the --

17:00:15 15 A. It's not up here, sir.

17:00:16 16 Q. Oh, sorry.

17:00:39 17 A. Could I have it in my hand? I think I can read it
17:00:42 18 better.

17:00:47 19 MR. POTTER: Can I approach?

17:00:48 20 THE COURT: If you need something to be zoomed
17:00:50 21 in, zoom in.

17:00:53 22 THE WITNESS: Keep zooming. That's better.

17:01:13 23 THE COURT: All right. Let's move on.

17:01:16 24 THE WITNESS: There should be a date on this.

17:01:18 25 THE COURT: Sir, hold on.

17:01:19 1 THE WITNESS: Sorry.

17:01:20 2 THE COURT: There's items in evidence. There's
17:01:23 3 no need to ask an argument or something you can argue.

17:01:29 4 MR. POTTER: Yes.

17:01:30 5 THE COURT: Let's move on.

17:01:31 6 BY MR. POTTER:

17:01:31 7 Q. The conversation that you said you had with the JAG
17:01:34 8 in relation to Mrs. Morales's date of hire, when would
17:01:38 9 you have had that conversation with the JAG?

17:01:43 10 A. Which position, sir?

17:01:46 11 Q. The conversation that you say you had with the JAG
17:01:49 12 regarding Mrs. Morales and the ESGR?

17:01:51 13 A. Yes.

17:01:52 14 Q. In relation to Mrs. Morales's date of hire, when
17:01:56 15 would you have had that conversation?

17:01:59 16 A. Prior for -- prior to her coming on board. And
17:02:03 17 that conversation is as follows: She had a --

17:02:08 18 MR. JUPITER: Your Honor, object. This is
17:02:11 19 nonresponsive.

17:02:12 20 THE COURT: All right. Overruled.

17:02:14 21 THE WITNESS: She had a lawsuit against the --

17:02:18 22 BY MR. POTTER:

17:02:18 23 Q. Don't mention --

17:02:20 24 THE COURT: Wait for a question.

17:02:23 25 Next question.

17:02:24 1 BY MR. POTTER:

17:02:24 2 Q. Now, you also mentioned regarding the hours of work
17:02:33 3 and you mentioned there was a caveat. What was the
17:02:36 4 caveat that you wanted to mention?

17:02:38 5 A. The caveat was the ESGR position is, she could work
17:02:41 6 from home.

17:03:01 7 MR. POTTER: Court's indulgence, Judge.

17:03:03 8 THE COURT: Yes.

17:03:04 9 (Pause)

17:03:04 10 MR. POTTER: No further questions of the
17:03:05 11 witness, Your Honor.

17:03:06 12 THE COURT: General Rivera, thank you for your
17:03:09 13 testimony.

17:03:09 14 You may step down.

17:03:09 15 (Witness withdrew from stand.)

17:03:13 16 THE COURT: Your next witness.

17:03:14 17 MR. POTTER: The next witness, the government
17:03:16 18 calls Baron Hignite.

17:03:46 19 THE CLERK: Please stand and raise your right
17:03:48 20 hand to take the oath.

17:03:49 21 (Witness sworn.)

17:03:51 22 THE WITNESS: So help me God.

17:03:51 23

17:03:51 24

17:03:53 25

17:03:53 1 THEREUPON, BARON HIGNITE, having been duly
17:03:56 2 sworn, was examined and testified as follows:

17:03:56 3 DIRECT EXAMINATION

17:03:56 4 BY MR. POTTER:

17:03:57 5 Q. Good afternoon, sir.

17:03:57 6 A. Good afternoon, sir.

17:03:59 7 Q. Can you give us your full name for the record,
17:04:01 8 please?

17:04:02 9 A. It's Baron Guy Hignite, H-i-g-n-i-t-e.

17:04:07 10 Q. And Mr. Hignite, how are you employed?

17:04:10 11 A. Employed by Military Personnel Services
17:04:12 12 Corporation. We're a military Department of Defense
17:04:15 13 contracting firm out of Falls Church, Virginia.

17:04:18 14 Q. And tell us what your company does?

17:04:20 15 A. We provide services primarily to the National
17:04:23 16 Guard, to the Army and International Guard and other
17:04:27 17 Department of Defense organizations, to support the
17:04:28 18 service members, their families and their employers.

17:04:34 19 Q. Mr. Hignite, you speak very fast. I'll ask you to
17:04:38 20 slow down just a little bit.

17:04:40 21 A. I sure will.

17:04:42 22 Q. And what is the relationship, what -- what was the
17:04:46 23 relationship between the MPSC and the Virgin Islands
17:04:49 24 National Guard?

17:04:51 25 A. We had a national contract that asked us to provide

17:04:56 1 several different positions. The one that I manage is
17:04:58 2 the employee supported Reserve and Guard contract,
17:05:03 3 professional services person. And that's someone who
17:05:05 4 works with the employee and Guard, Reserve, that is the
17:05:08 5 organization that is part of the Department of Defense
17:05:10 6 that assists returning service members with any
17:05:13 7 conflicts they may have with their job, to make sure
17:05:15 8 that the job is held for them while they're gone, or
17:05:19 9 that they return to a job that pays what they should
17:05:22 10 have had, or promotions they would have had, while they
17:05:25 11 were away during their war fighting duties. They also
17:05:28 12 help with employment, if someone needs a job.

17:05:33 13 Q. Now, what were the prescribed hours for -- or what
17:05:38 14 are the prescribed hours for your ESGR person?

17:05:40 15 A. All of our folks are assigned to a joint force
17:05:43 16 headquarters at a National Guard location, so therefore
17:05:46 17 they would work the hours that the facility has.

17:05:49 18 For instance, some states, to save on energy, might
17:05:52 19 have four ten-hour days. If that's the case, the joint
17:05:56 20 force headquarters, our folks would work the same kind
17:05:58 21 of schedule that was held.

17:05:59 22 Q. What was the schedule for the Virgin Islands?

17:06:01 23 A. The Virgin Islands, to my knowledge, was a 9:00 to
17:06:05 24 5:00 type of position or 8:00 till 5:00 position,
17:06:07 25 five days a week.

17:06:08 1 And there's no overtime with our positions. They
17:06:09 2 have to work only a 40-hour week. If you have something
17:06:13 3 to take place on a Saturday or in the evening, then you
17:06:15 4 would have to take off, during that same time period,
17:06:18 5 that amount of time, because we cannot pay more than
17:06:21 6 40 hours a week.

17:06:29 7 Q. Do you know Sherrymae Morales?

17:06:30 8 A. I sure do. Very well.

17:06:32 9 Q. Tell us how you know her.

17:06:33 10 A. I was the national RAC chairman for the recruiting
17:06:37 11 retention for the National Guard, and I got to know each
17:06:39 12 one of the recruiting managers. And during that time
17:06:42 13 period, the first time I met Sherry she was in charge of
17:06:46 14 recruiting for the Virgin Islands National Guard.

17:06:54 15 Q. Did you ever hire Sherrymae Morales?

17:06:56 16 A. I did. I hired her in November of 2007. And she
17:07:01 17 came to work for me and worked during that first period
17:07:04 18 of time until, I believe it was June of 2010. She had a
17:07:14 19 break in that time period. And I hired her back again
17:07:18 20 on, I believe it was November to June of 2010; and then
17:07:23 21 2007 to 2010, and then she came back on, in September of
17:07:26 22 2010 and stayed until July of 2011.

17:07:30 23 Q. Okay. Now, in March -- well, when you hired
17:07:41 24 Ms. Morales, what, if any, conversations did you have
17:07:44 25 with her regarding outside employment?

17:07:48 1 A. It's standard with our company, we have had, we had
17:07:52 2 a company that had 2,172 employees, so it's a pretty
17:07:57 3 large company. So as a result we had lots of instances
17:07:59 4 where people work more than the prescribed job. So it
17:08:02 5 was always --

17:08:03 6 MR. JUPITER: Your Honor, I would object. It's
17:08:06 7 irrelevant. This is regarding MPSC, and they're not
17:08:10 8 considered a victim here.

17:08:11 9 THE COURT: All right. Overruled.

17:08:13 10 THE WITNESS: -- the individual would actually
17:08:15 11 work a 40-hour week, but they were in a position where
17:08:20 12 everyone is explained, "You can't do more than one job."
17:08:23 13 It's actually something when you're hired, you have to
17:08:24 14 sign the handbook that says inside that you've read and
17:08:29 15 understand what's in there, and you must have permission
17:08:31 16 to work more than one job.

17:08:33 17 BY MR. POTTER:

17:08:33 18 Q. Okay. And when you hired Ms. Morales, did she ever
17:08:41 19 ask permission to hold more than one job?

17:08:43 20 A. No.

17:08:44 21 MR. JUPITER: Objection as to relevance, Your
17:08:46 22 Honor. Move to strike.

17:08:47 23 THE COURT: Overruled.

17:09:10 24 BY MR. POTTER:

17:09:10 25 Q. Now, the -- was Sherrymae Morales the only ESGR

17:09:15 1 person that you have hired in the Virgin Islands?

17:09:17 2 A. No. We have hired several that have been in that
17:09:21 3 position. It was a little problematic of getting
17:09:25 4 someone who had the qualifications to do the job, so we
17:09:27 5 had a bit of a turnover. We had Emmett Hansen, Janice
17:09:32 6 Aelleyne, Sherry Morales. We also hired Dazarene
17:09:38 7 Lescott. She was the administrative support technician,
17:09:41 8 and she worked for the St. Thomas area, primarily.

17:09:46 9 Q. Okay.

17:09:47 10 A. I interviewed her.

17:09:48 11 Q. Wait for my question. Sorry.

17:10:02 12 In March of 2010, was Sherrymae Morales still
17:10:06 13 employed with you as an ESGR?

17:10:08 14 A. She was.

17:10:14 15 Q. In March of 2010, did Sherrymae Morales indicate to
17:10:22 16 you that she had also been hired to work as a full-time
17:10:25 17 military tech employee with the National Guard?

17:10:29 18 A. I understood that she was being recalled to active
17:10:31 19 duty or to another position. That has happened many
17:10:34 20 times in the past during the war fight effort --

17:10:37 21 Q. I'm talking about in March of 2010.

17:10:39 22 A. In 2010?

17:10:41 23 Q. March of 2010.

17:10:43 24 A. She -- yes.

17:10:48 25 Q. She told you that she was being rehired -- that she

17:10:51 1 was going back as a full-time military tech?

17:10:53 2 A. She was going back in uniform, yes.

17:11:04 3 Q. And what, if any, conversations did you have with
17:11:07 4 her regarding the ESGR position, if she was going back
17:11:14 5 into the Guard as a military tech?

17:11:17 6 A. I asked her for assistance on somebody that had the
17:11:19 7 same skill sets and the qualifications to be able to do
17:11:22 8 that job, and any assistance she could give me would be
17:11:25 9 appreciated.

17:11:27 10 Q. Was she still a full-time employee of your company,
17:11:31 11 MPSC?

17:11:32 12 A. She was up until June of 2010.

17:11:35 13 Q. So between June -- between March of 2010 and June
17:11:40 14 of 2010, she worked for you full-time and she worked for
17:11:49 15 the National Guard full-time?

17:11:52 16 A. I only knew that she worked for me full-time. I
17:11:54 17 did not know about her employment with the National
17:12:09 18 Guard. We wouldn't have allowed that.

17:12:10 19 THE COURT: Wait for a question.

17:12:20 20 BY MR. POTTER:

17:12:20 21 Q. How did Sherrymae Morales get paid?

17:12:25 22 A. Sir?

17:12:25 23 Q. How did she get paid?

17:12:26 24 A. She was paid twice a month on the -- it was on the
17:12:29 25 8th and the 23rd of each month.

17:12:31 1 Q. And what, if anything, did she submit to you to get
17:12:34 2 paid?

17:12:35 3 MR. JUPITER: Your Honor, objection. Once
17:12:36 4 again, the charges only relate to her payments from the
17:12:39 5 Virgin Islands National Guard.

17:12:42 6 THE COURT: Overruled.

17:12:45 7 THE WITNESS: She -- we have the best payroll
17:12:48 8 system in the nation. That's Deltek. And Deltek is
17:12:53 9 signed and it's approved, and then the payment goes into
17:12:56 10 the payroll and she receives the check and automatic
17:12:59 11 deposit.

17:13:10 12 MR. POTTER: Court's indulgence, Judge?

17:13:12 13 THE COURT: Yes.

17:13:12 14 (Pause.)

17:13:21 15 MR. POTTER: Now, let me show you what's been
17:13:23 16 marked as Government's Exhibit 5.2 for identification
17:13:29 17 purposes.

17:13:34 18 (Government's Exhibit 5.2 marked for
17:13:34 19 identification.)

17:13:34 20 BY MR. POTTER:

17:13:39 21 Q. And ask you if you recognize it?

17:13:39 22 A. Yes. That's the resignation letter that she sent
17:13:50 23 me.

17:13:50 24 Q. And do you know approximately when you received
17:13:52 25 that letter, sir?

17:13:53 1 A. I received it approximately that same date, the
17:13:56 2 30th of June, 2010.

17:13:57 3 Q. And your name appears on the letter?

17:13:59 4 A. It is. It came to me.

17:14:02 5 Q. And does the letter seem to be an accurate
17:14:06 6 reflection of the letter that you received -- the
17:14:08 7 resignation letter that you received from Sherrymae
17:14:12 8 Morales in June -- well, effective June 30th, 2010?

17:14:18 9 A. Yes, sir.

17:14:21 10 MR. POTTER: Your Honor, can we publish -- can
17:14:23 11 we move for -- to admit Government's Exhibit 5.2?

17:14:30 12 THE COURT: Attorney Jupiter.

17:14:31 13 MR. JUPITER: No objection, Your Honor.

17:14:32 14 THE COURT: Exhibit 5.2 is admitted.

17:14:35 15 (Government's Exhibit 5.2 admitted into evidence.)

17:14:35 16 MR. POTTER: Can we publish, Your Honor?

17:14:42 17 (Exhibit published.)

17:14:42 18 BY MR. POTTER:

17:14:43 19 Q. Mr. Hignite, looking at Government's Exhibit 5.2,
17:14:53 20 what was the reason that Sherrymae Morales gave that she
17:14:56 21 was resigning from your organization?

17:15:05 22 A. I understood that she was resigning to go back on
17:15:08 23 an active duty tour, or take a civil service military
17:15:11 24 technician, which would put her back in uniform on a
17:15:15 25 full-time basis with the Virgin Islands National Guard.

17:15:17 1 Q. And she had that conversation with you?

17:15:19 2 A. She did.

17:15:26 3 Q. And Government's Exhibit 5.2, did she send you this
17:15:28 4 before or after -- well, the testimony that you just
17:15:31 5 gave, was that a verbal communication between you and
17:15:37 6 Sherrymae Morales?

17:15:37 7 A. We did. We had a good relationship and she kept me
17:15:41 8 informed. She told me she was taking her position back
17:15:44 9 with the National Guard, leaving my employment.

17:15:46 10 Q. Yes.

17:15:46 11 And Government Exhibit 5.2, did you receive that
17:15:50 12 before or after your conversation with Sherrymae
17:15:52 13 Morales?

17:15:52 14 A. It was after the conversation.

17:15:55 15 Q. And do you recall what month she actually had the
17:15:59 16 conversation with you?

17:16:03 17 A. I believe it was first of June, but I can't tell
17:16:06 18 you the exact date, sir.

17:16:22 19 Q. Now, did there come -- after Sherrymae resigned her
17:16:32 20 position -- shortly after the defendant resigned her
17:16:34 21 position, did there come a time that you rehired her?

17:16:38 22 A. I had a telephone call from the chief of staff at
17:16:41 23 the time, Colonel Ruan. And Colonel Ruan contact me to
17:16:45 24 ask about the expenditure of funds and filling a
17:16:48 25 position in the Virgin Islands --

17:16:50 1 MR. JUPITER: Objection.

17:16:50 2 THE COURT: Sustained.

17:16:51 3 BY MR. POTTER:

17:16:51 4 Q. Did there come a time after June of 2010 that
17:16:56 5 you -- that Ms. Morales expressed an interest to come
17:17:01 6 back to be an ESGR employee, contract employee?

17:17:05 7 A. She did, after I contacted her.

17:17:08 8 Q. And tell us when that was.

17:17:10 9 A. Timing was, it must have been pretty close to the,
17:17:18 10 must have been August, before the month of September.
17:17:23 11 And we had not filled the position, and I had difficulty
17:17:26 12 in finding someone that had this skills set.

17:17:28 13 And I contacted her and asked if she would do a
17:17:31 14 couple things for me. One is prepare the PEPAS report,
17:17:35 15 which is a report that is required under the contract
17:17:36 16 for the Department of Defense ESGR program. No one else
17:17:39 17 knew how to do that. I asked her to do that.

17:17:41 18 And she said she would.

17:17:42 19 Q. Okay. That's fine.

17:17:49 20 Did you in fact rehire her?

17:17:51 21 A. I did rehire her.

17:17:52 22 Q. And when you rehired her, sir, did she tell you
17:17:55 23 that she was still a full-time member of the Virgin
17:17:58 24 Islands National Guard?

17:17:59 25 MR. JUPITER: I object to leading.

17:18:00 1 THE WITNESS: No, sir.

17:18:01 2 THE COURT: Sustained.

17:18:01 3 THE WITNESS: She did not.

17:18:05 4 BY MR. POTTER:

17:18:05 5 Q. What, if anything, did she relate to you regarding
17:18:10 6 her then-current employment?

17:18:13 7 A. She related she's going to be able to come back and
17:18:16 8 take the position and work for me. She said it was not
17:18:19 9 as challenging or as rewarding as she thought it was
17:18:22 10 going to be, and she would be happy to come back.

17:18:25 11 And I said I would, as long as I get approval from
17:18:27 12 her chain of command.

17:18:28 13 Q. And which position wasn't as challenging or
17:18:32 14 rewarding?

17:18:33 15 A. I assumed it was the position she had as a military
17:18:36 16 position.

17:18:46 17 Q. And prior to -- or after you hired her, did she
17:18:55 18 tell you that she had resigned from her military
17:18:59 19 position?

17:19:00 20 A. Yes, I think she did. And the reason she would is
17:19:04 21 because --

17:19:04 22 MR. JUPITER: Objection, Your Honor. Move to
17:19:06 23 strike.

17:19:06 24 THE COURT: Sustained, just as to the second
17:19:10 25 part.

17:19:11 1 Go ahead. Next question.

17:19:11 2 (Pause.)

17:19:30 3 THE COURT: Anything else for this witness?

17:19:32 4 MR. POTTER: Yes, Judge.

17:19:33 5 BY MR. POTTER:

17:19:34 6 Q. Did there come a time that the defendant stopped
17:19:37 7 working for the MPSC?

17:19:40 8 A. She did. She left us in June of 2011.

17:19:52 9 Q. And did she tell you why she was leaving?

17:19:55 10 A. She had two series of health issues. One was her
17:19:58 11 daughter that had some kind of an eye problem. I can't
17:20:01 12 remember what it was --

17:20:02 13 MR. JUPITER: Your Honor, I object to
17:20:03 14 relevance.

17:20:05 15 THE COURT: Overruled.

17:20:06 16 THE WITNESS: And the second was, I recall she
17:20:07 17 had breast cancer, I had been told --

17:20:11 18 MR. POTTER: Let me show you --

17:20:12 19 THE WITNESS: -- and had been moved to the
17:20:13 20 mainland --

17:20:14 21 THE COURT: Wait for a question.

17:20:15 22 MR. POTTER: Let me show you what has been
17:20:17 23 marked as Government Exhibit 5.3 for identification, and
17:20:20 24 ask you if you recognize it.

17:20:23 25

17:20:23 1 (Government's Exhibit 5.3 marked for
17:20:23 2 identification.)

17:20:41 3 BY MR. POTTER:

17:20:41 4 Q. Do you recognize that, sir?

17:20:42 5 A. I do recognize it. It's hard for me to see. It's
17:20:47 6 a little small. But it has "medical prognosis."

17:20:50 7 Q. Let me try and blow it up for you.

17:20:53 8 Does that help?

17:20:53 9 A. Yes, sir. Very much sir.

17:20:55 10 Q. So, what is Government Exhibit 5.3? What is it?

17:21:01 11 A. It is the reason that -- letter of resignation is
17:21:06 12 because of medical --

17:21:08 13 MR. JUPITER. Objection. It is not in
17:21:09 14 evidence.

17:21:09 15 BY MR. POTTER:

17:21:09 16 Q. Just tell us what it is.

17:21:11 17 A. What is written here --

17:21:13 18 Q. Did you receive that, sir?

17:21:14 19 A. I did, sir.

17:21:15 20 Q. And who did you receive that from?

17:21:17 21 A. I received that from Sherrymae Morales.

17:21:20 22 Q. And does your title appear on the letter?

17:21:22 23 A. Absolutely. Yes, I received that.

17:21:23 24 Q. And does the letter accurately -- is it an accurate
17:21:26 25 representation of the letter you received from

17:21:28 1 Sherrymae Morales regarding her resignation?

17:21:31 2 A. Yes, sir.

17:21:38 3 MR. POTTER: We move to admit Government's
17:21:41 4 Exhibit 5.3.

17:21:42 5 THE COURT: Attorney Jupiter.

17:21:43 6 MR. JUPITER: I object as irrelevant.

17:21:44 7 THE COURT: It's under advisement.

17:21:46 8 MR. JUPITER: May I -- yes, Your Honor.

17:21:49 9 THE COURT: 403.

17:21:50 10 Next question.

17:21:57 11 MR. POTTER: Court's indulgence, Your Honor?

17:21:59 12 THE COURT: Yes.

17:22:08 13 (Pause.)

17:22:08 14 BY MR. POTTER:

17:22:08 15 Q. What date did she finally resign from the MPSC?

17:22:12 16 A. She was -- she left us in July of 2011.

17:22:36 17 Q. Now, did Ms. Morales -- in the time that she worked
17:22:40 18 for you, did she ever come and request to work outside
17:22:48 19 the Monday to Friday, 8:00 to 5:00, work schedule?

17:22:52 20 A. No.

17:23:11 21 MR. POTTER: Now, let me show you what's been
17:23:13 22 marked Government Exhibit 5.4 for identification
17:23:18 23 purposes.

17:23:19 24 (Government's Exhibit 5.4 marked for
17:23:19 25 identification.)

17:23:21 1 BY MR. POTTER:

17:23:21 2 Q. Do you recognize Government's Exhibit 5.4?

17:23:23 3 A. I do recognize it, sir. It's our handbook,
17:23:27 4 employee handbook.

17:23:31 5 Q. And does Government Exhibit 5.4 -- is it a fair and
17:23:36 6 accurate representation of your handbook?

17:23:38 7 A. Yes.

17:23:44 8 Q. And with respect to all employees of, all contract
17:23:50 9 employees with ESGR, what, if anything, do you do with
17:23:55 10 this handbook?

17:23:56 11 MR. JUPITER: Objection, Your Honor. It's not
17:23:57 12 in evidence.

17:24:00 13 THE COURT: Overruled. The question is: What
17:24:03 14 do you do with the handbook?

17:24:05 15 MR. JUPITER: Oh, I'm sorry.

17:24:06 16 THE COURT: Overruled.

17:24:07 17 THE WITNESS: It's a direct guidance for each
17:24:10 18 employee on what is allowed and what is not allowed
17:24:13 19 within the scope of their job, and their duties through
17:24:17 20 their performance statement and to their position
17:24:21 21 description.

17:24:22 22 MR. POTTER: Your Honor, we move to admit
17:24:24 23 Government's Exhibit 5.4.

17:24:26 24 THE COURT: Attorney Jupiter?

17:24:28 25 MR. JUPITER: Your Honor, we object.

17:24:29 1 THE COURT: All right. It's under advisement.

17:24:30 2 Next question.

17:24:44 3 BY MR. POTTER:

17:24:44 4 Q. Can someone begin work for MPSC without having
17:24:51 5 obtained and signed for the handbook?

17:24:53 6 A. No, they cannot.

17:24:59 7 Q. Do you, sir, have personal knowledge of when
17:25:03 8 Mr. Morales was hired and giving her a copy of your
17:25:08 9 handbook?

17:25:08 10 A. She would have received one at the end process of
17:25:11 11 both the 2007 November date and also at the reemployment
17:25:16 12 that started again in 2010.

17:25:30 13 MR. POTTER: Your Honor, again we move for
17:25:36 14 admission of Government's Exhibit 5.4.

17:25:38 15 THE COURT: It's under advisement.

17:25:49 16 MR. POTTER: Brief sidebar, Your Honor.

17:25:50 17 THE COURT: Not now. Thank you.

17:25:58 18 MR. POTTER: Court's indulgence?

17:26:00 19 THE COURT: Yes.

17:26:00 20 (Pause.)

17:26:17 21 MR. POTTER: Your Honor, pursuant to Federal
17:26:21 22 Rules of Evidence 803.6 and Federal Rules of Evidence
17:26:27 23 902.11, we are moving for the admission of certain
17:26:31 24 documents pursuing -- pursuant to a declaration of
17:26:36 25 authentication of business records that the government

17:26:39 1 has. That's Government's Exhibit 5A.

17:26:39 2 (Government's Exhibit 5A marked for
17:26:39 3 identification.)

17:26:45 4 MR. POTTER: They are related to the business
17:26:46 5 records of the MPSC, related to Sherrymae Morales. And
17:26:57 6 we ask for their admission. The specific documents,
17:27:07 7 Judge --

17:27:07 8 THE COURT: All right. It's under advisement.

17:27:25 9 MR. POTTER: Court's indulgence, Your Honor?

17:27:26 10 THE COURT: Yes.

17:27:35 11 (Pause.)

17:27:35 12 BY MR. POTTER:

17:27:36 13 Q. Now, Mr. Hignite, are you familiar with Dazarene
17:27:39 14 Lescott?

17:27:40 15 A. Yes. She was an employee of ours.

17:27:40 16 Q. And when did you hire Dazarene Lescott?

17:27:42 17 A. She interviewed in September of 2010 and I hired
17:27:45 18 her in October of 2010.

17:27:46 19 Q. Who, if anyone, recommended Ms. Lescott to your
17:27:50 20 employ?

17:27:51 21 A. She was one of a group that we interviewed, and she
17:27:54 22 was highly recommended by Mrs. Morales.

17:27:59 23 Q. And what were the duties of Ms. Lescott?

17:28:02 24 A. Sir?

17:28:03 25 Q. What were her duties?

17:28:06 1 A. She was the administrative support technician.

17:28:08 2 Since we had two employees working the ESGR program,

17:28:12 3 Sherry Morales took the Christiansted side in St. Croix,

17:28:19 4 and Dazarene had St. Thomas, took St. Thomas. It was a

17:28:27 5 larger business opportunity to develop for the employer

17:28:30 6 side of the contract.

17:28:33 7 Q. And during the time that Mrs. Morales was ESGR, who

17:28:38 8 supervised her?

17:28:39 9 A. By regulation, a contractor may not supervise

17:28:42 10 another contractor. However, you have a lead contractor

17:28:46 11 that can give guidance on what activities you do, so in

17:28:48 12 that case --

17:28:48 13 Q. No. Who supervised Ms. Morales?

17:28:51 14 A. I did.

17:28:51 15 Q. And how is it that you supervised Ms. Morales?

17:28:55 16 A. Through reports, primarily. Monthly -- progress

17:28:59 17 reports and the PEPAS report.

17:29:02 18 Q. Were you present in the Virgin Islands at the time

17:29:03 19 of her supervision?

17:29:04 20 A. No, sir. We do it remotely. We have national

17:29:07 21 contracts with 54 locations.

17:29:12 22 Q. And how often would you get the reports?

17:29:15 23 A. Always on time, always bimonthly.

17:29:23 24 Q. And did you get any reports from Ms. Lescott?

17:29:28 25 A. She did reports that also came through

17:29:31 1 Mrs. Morales, and Mrs. Morales would forward them to me.
17:29:33 2 And they would also go in directly to the ESGR office.

17:29:58 3 MR. POTTER: Court's indulgence, Your Honor?

17:30:00 4 THE COURT: Yes.

17:30:22 5 MR. POTTER: That is...

17:30:42 6 (Pause.)

17:30:42 7 BY MR. POTTER:

17:30:44 8 Q. Let me show you what's been marked Government's
17:30:47 9 Exhibit 5.2 and Government's Exhibit 10.

17:31:19 10 Now, Mr. Hignite, in 2010, April of 2010, did you
17:31:29 11 have any conversation with Mrs. Morales -- yes. In
17:31:36 12 April of 2010, did you have any conversation with
17:31:41 13 Mrs. Morales regarding the expenditure of ESGR funds as
17:31:49 14 a volunteer?

17:31:50 15 A. Not as a volunteer. You cannot be a volunteer and
17:31:52 16 be a contract employee for the Department of Defense.

17:32:02 17 Q. In April of 2010, was Ms. Morales still a full-time
17:32:19 18 employee?

17:32:20 19 A. Yes. And we had a conversation --

17:32:27 20 THE COURT: Wait for a question.

17:32:47 21 BY MR. POTTER:

17:32:47 22 Q. Did anyone from the National Guard contact you in
17:32:51 23 April of 2010 and indicate to you that Ms. Morales had
17:32:59 24 indicated she had, she was now a volunteer for the ESGR?

17:33:03 25 MR. JUPITER: Leading, Your Honor.

17:33:04 1 THE COURT: Sustained.

17:33:18 2 MR. POTTER: Can I publish

17:33:20 3 Government's Exhibit 5.2 and Government's Exhibit 10?

17:33:20 4 BY MR. POTTER:

17:33:42 5 Q. Mr. Hignite, let me show you Government's

17:33:47 6 Exhibit 10 and ask you if you could read --

17:34:03 7 THE COURT: No, let's move on.

17:34:05 8 MR. POTTER: That's all I have at this time for
17:34:07 9 this witness.

17:34:08 10 THE COURT: Attorney Jupiter?

17:34:26 11 CROSS-EXAMINATION

17:34:27 12 BY MR. JUPITER:

17:34:27 13 Q. Good afternoon.

17:34:28 14 A. Good afternoon, sir.

17:34:29 15 Q. Mr. Hignite, you were in contact with the
17:34:33 16 leadership at the Virgin Islands National Guard before
17:34:38 17 you -- in 2007, just before you hired Ms. Morales?

17:34:44 18 A. Yes, sir.

17:34:44 19 Q. And you received a recommendation from Colonel
17:34:47 20 Lewis and JAG Marise James, recommending Ms. Morales?

17:34:54 21 A. I did receive a recommendation.

17:34:56 22 Q. And you were already familiar with Ms. Morales when
17:35:00 23 they talked to you?

17:35:01 24 A. Very much.

17:35:02 25 Q. Is it fair to say by the time you talked to

17:35:06 1 Mrs. Morales, as long as she was willing to accept, it
17:35:09 2 was a done deal?

17:35:10 3 A. We still had protocols to go through. We had other
17:35:13 4 people that were being considered. But after interviews
17:35:15 5 were conducted and after talking to Ms. Morales, I felt
17:35:18 6 she was the best for the position. We hired her,
17:35:21 7 brought her on board.

17:35:21 8 Q. And prior to that, there was a problem in terms of
17:35:27 9 getting the ESGR work done at the -- in the Virgin
17:35:30 10 Islands, correct?

17:35:31 11 A. We had someone briefly in the job, but, yes, there
17:35:35 12 was, lacking in the output and expectations I had.

17:35:38 13 Q. Part of the duties is that you're supposed to have
17:35:41 14 a certain number of volunteers working in the ESGR,
17:35:44 15 correct?

17:35:44 16 A. It's supposed to be a committee in each one of the
17:35:47 17 areas, and that includes the Virgin Islands.

17:35:48 18 Q. Okay. And the person before Ms. Morales didn't
17:35:52 19 have very many volunteers, correct?

17:35:55 20 A. Not as many as I expected.

17:35:57 21 Q. And you're supposed to have outreach programs for,
17:36:00 22 to make sure that Guard and Reserve members know who you
17:36:03 23 are and that you're there to help, right?

17:36:05 24 A. Yes.

17:36:06 25 Q. And it wasn't a whole bunch of activities going on

17:36:08 1 before Ms. Morales came on, correct?

17:36:12 2 A. There were activities going on. I can't tell you
17:36:15 3 the same amount, but they weren't at the levels we
17:36:18 4 expected.

17:36:18 5 Q. And those activities increased when Mrs. Morales
17:36:22 6 came on board, correct?

17:36:23 7 A. That's correct.

17:36:23 8 Q. And the volunteer activities -- the volunteer
17:36:27 9 trainings increased, correct?

17:36:28 10 A. There was also a state chairman appointed at that
17:36:31 11 time, so that certainly did increase because of the
17:36:34 12 added activity between several people.

17:36:37 13 Q. Okay. Now you had -- in this discussion you had
17:36:42 14 with Mrs. Morales before she was hired, this telephone
17:36:45 15 interview, she explained to you that she had a realty
17:36:48 16 company, didn't she?

17:36:48 17 A. She did.

17:36:49 18 Q. And she told you that she would -- actually --

17:36:52 19 THE COURT: No, stop.

17:36:58 20 MR. JUPITER: Okay.

17:36:58 21 BY MR. JUPITER:

17:36:58 22 Q. Now, she was hired -- after she was hired, you were
17:37:03 23 her supervisor, correct?

17:37:04 24 A. Yes.

17:37:04 25 Q. All right. And at that time she did not have an

17:37:08 1 assistant, did she?

17:37:09 2 A. She did not.

17:37:10 3 Q. And she worked, worked in that position all the way
17:37:16 4 through, as we saw, through June of 2010 --

17:37:20 5 A. 2010.

17:37:21 6 Q. -- correct?

17:37:22 7 A. Correct.

17:37:23 8 Q. Okay. And then you actually rehired, and as a
17:37:28 9 matter of fact, you said prior to that you had a
17:37:32 10 conversation with her about the position she had, the
17:37:37 11 fact that she was going back to the Guard, right?

17:37:40 12 A. Yes.

17:37:41 13 Q. Okay. And at this point you asked her to stay on
17:37:49 14 until you can get a replacement, didn't you?

17:37:54 15 A. I don't recall that conversation.

17:37:56 16 Q. Okay. Now she didn't resign until June of 2010,
17:38:04 17 right?

17:38:04 18 A. June 30th.

17:38:05 19 Q. Okay. And she continued to do the work all the way
17:38:12 20 up to June 30th, 2010, correct?

17:38:14 21 A. She did.

17:38:15 22 Q. All right. And you recall that she also told you
17:38:21 23 prior to this, prior to her resignation, that --

17:38:28 24 MR. POTTER: Objection, Your Honor.

17:38:30 25 THE COURT: Sustained.

17:38:41 1 BY MR. JUPITER:

17:38:42 2 Q. At any rate, she stopped in June of 2010, correct?

17:38:44 3 A. Yes.

17:38:45 4 Q. And she was trying to help you find a replacement,
17:38:49 5 wasn't she?

17:38:50 6 A. Yes, she was.

17:38:51 7 Q. Okay. And the people that she was giving you, you
17:38:54 8 weren't pleased with them? You didn't feel they met the
17:38:59 9 qualifications?

17:39:01 10 A. Yes.

17:39:01 11 Q. And so by September of 2010, you asked her to come
17:39:09 12 back on, correct?

17:39:11 13 A. Sometime in August I called her and told her I
17:39:14 14 needed someone. I had not been able to fill it.

17:39:16 15 And she said she was not as happy with the position
17:39:18 16 she had, and she would entertain returning back to my
17:39:23 17 position.

17:39:23 18 Q. Okay. And you contacted Colonel Lewis, correct?

17:39:27 19 A. Yes, sir.

17:39:28 20 Q. And you made sure that it was okay with Colonel
17:39:30 21 Lewis that she continued to work on as ESGR -- in the
17:39:37 22 contract position?

17:39:37 23 A. I would have done it through the chain. I would
17:39:39 24 have started with the J1, which I believe was Colonel
17:39:42 25 Cills at the time, and then after that conversation move

17:39:44 1 to, the next highest person would have been Colonel then
17:39:48 2 later Brigadier General Lewis, yes.

17:39:50 3 Q. And both of them concurred that Mrs. Morales could
17:39:53 4 work in that position at ESGR, correct?

17:39:57 5 A. Yes.

17:39:58 6 Q. Now you indicated that when someone is hired with
17:40:00 7 MPSC, there's a handbook that they're supposed to sign,
17:40:05 8 correct?

17:40:05 9 A. Yes.

17:40:05 10 Q. And then you keep a copy of that signed handbook?

17:40:07 11 A. Yes, sir.

17:40:08 12 Q. And you keep that in your filings?

17:40:10 13 A. I do not, no.

17:40:11 14 Q. It goes to MPSC?

17:40:13 15 A. Yes.

17:40:13 16 Q. And you also indicated that there's a letter of
17:40:15 17 intent that they have to sign? Or did you testify to
17:40:20 18 that?

17:40:20 19 A. Letter of intent for what?

17:40:21 20 Q. Let me ask you, isn't there a letter of intent that
17:40:24 21 they have to sign that says that they will not work at
17:40:27 22 any outside employment?

17:40:28 23 A. That is part of the handbook. When they sign the
17:40:31 24 handbook they are admitting that they have read it and
17:40:34 25 they understand, and they can't do more than one job at

17:40:37 1 the time.

17:40:37 2 Q. Isn't there something in addition? Isn't the
17:40:42 3 letter of intent an additional --

17:40:44 4 A. I don't think so.

17:41:14 5 Q. Okay. Do you remember testifying before a grand
17:41:17 6 jury in this matter on December 4th, 2014?

17:41:22 7 A. I do.

17:41:25 8 THE COURT: Use the Elmo so we can all see.

17:41:38 9 BY MR. JUPITER:

17:41:39 10 Q. And do you remember testifying, as you stated,
17:41:43 11 about them signing a handbook, as well as -- and then
17:41:47 12 later saying they also have to sign a letter of intent?

17:41:50 13 A. The letter of intent is for employment. It's to
17:41:53 14 take the job. It's not to say, "I'm going to work one
17:41:55 15 or two jobs."

17:41:56 16 Q. Okay. Did you --

17:41:57 17 A. It also has my name misspelled on the front of that
17:42:02 18 page. That may go to its accuracy.

17:42:04 19 Q. Okay. Did you testify before the grand jury, "So
17:42:09 20 as a result they have to sign a letter of intent that
17:42:11 21 says they will not work some place else"?

17:42:13 22 A. That is included in the handbook.

17:42:15 23 Q. Did you testify to that?

17:42:16 24 A. I did.

17:42:18 25 Q. Okay. And --

17:42:18 1 A. But it's not a separate letter. When they signed a
17:42:21 2 handbook, that says they've read and understand they
17:42:26 3 can't work more than one job at a time.

17:42:29 4 Q. But did you testify a few paragraphs higher up,
17:42:34 5 "When we hire somebody, they have to sign a handbook,
17:42:36 6 and the handbook says they may not hold more than one
17:42:39 7 job"?

17:42:39 8 A. I said that.

17:42:40 9 Q. Okay. And then later on you talked about a letter
17:42:43 10 of intent?

17:42:44 11 A. Letter of intent is to accept the position and
17:42:46 12 understand what the duties and requirements are. It is
17:42:48 13 not the intent on working one or two jobs. Everyone
17:42:52 14 knows you can't work but one job if you're a Department
17:42:56 15 of Defense contractor.

17:42:56 16 Q. All I'm trying to make clear is that, as your
17:42:59 17 testimony was December 4th, 2014, you talked about two
17:43:02 18 different documents, correct?

17:43:03 19 A. I don't see any --

17:43:06 20 MR. POTTER: Objection, Your Honor.

17:43:08 21 THE WITNESS: -- difference to what you just
17:43:10 22 said.

17:43:10 23 THE COURT: Sustained. It's argumentative.

17:43:14 24 Next question.

17:43:16 25 MR. JUPITER: Your Honor, I don't have any

17:43:18 1 further questions.

17:43:19 2 THE COURT: Redirect?

17:43:20 3 MR. POTTER: Court's indulgence, Judge?

17:43:32 4 (Pause.)

17:43:32 5 REDIRECT EXAMINATION

17:43:33 6 BY MR. POTTER:

17:43:42 7 Q. Mr. Hignite, when you hired the defendant, you had
17:43:55 8 a specific conversation with her regarding outside
17:44:01 9 employment?

17:44:01 10 A. I did.

17:44:10 11 Q. That would have been the initial time in 2007?

17:44:12 12 A. Yes, sir.

17:44:18 13 Q. Is it also your testimony in 2010 you had the very
17:44:24 14 same conversation with her regarding outside employment?

17:44:28 15 A. Yes, sir.

17:44:29 16 Q. And when she had that conversation -- when you had
17:44:32 17 that conversation with her, did she admit to you that
17:44:37 18 she had outside employment?

17:44:40 19 MR. JUPITER: Your Honor, I object. This is
17:44:42 20 what Mr. Potter objected to on my cross, and it's
17:44:47 21 leading.

17:44:47 22 THE COURT: Sustained.

17:44:54 23 BY MR. POTTER:

17:44:55 24 Q. Would you have hired the defendant back in
17:45:00 25 September of 2010 if she had outside employment?

17:45:10 1 MR. JUPITER: Objection.

17:45:17 2 THE WITNESS: Absolutely --

17:45:19 3 THE COURT: Sustained.

17:45:21 4 THE WITNESS: -- not.

17:45:22 5 THE COURT: Sustained.

17:45:28 6 MR. POTTER: Court's indulgence, Judge.

17:45:31 7 (Pause.)

17:45:31 8 BY MR. POTTER:

17:45:31 9 Q. In your communication with Mrs. Morales, did she
17:45:42 10 ever use her rank, her military rank --

17:45:47 11 MR. JUPITER: Objection. Outside the scope.

17:45:52 12 THE COURT: Let me hear the question.

17:45:53 13 Overruled.

17:45:54 14 BY MR. POTTER:

17:45:54 15 Q. In your e-mail or other communications -- well, in
17:45:58 16 your e-mail communications or letter communications with
17:46:00 17 Mrs. Morales, did she ever use her military rank?

17:46:03 18 A. She did. There's an e-mail that I sent out to
17:46:07 19 everyone as a result, and said that you may not --

17:46:10 20 MR. JUPITER: Objection, Your Honor.

17:46:10 21 THE WITNESS: -- give the appearance of --

17:46:12 22 THE COURT: Okay. Stop. Sustained.

17:46:24 23 BY MR. POTTER:

17:46:24 24 Q. So you indicated she did use her military --

17:46:28 25 THE COURT: Stop going over the -- don't

17:46:30 1 repeat.

17:46:32 2 Next question.

17:46:33 3 MR. POTTER: I thought he objected to something
17:46:37 4 different. I'm sorry.

17:46:38 5 No further questions, Judge.

17:46:40 6 THE COURT: Mr. Hignite, thank you for your
17:46:43 7 testimony.

17:46:43 8 You may step down.

17:46:44 9 (Witness withdrew from stand.)

17:46:44 10 THE COURT: Ladies and gentlemen, we're going
17:46:46 11 to end for the evening. Let me thank you for your
17:46:48 12 patience. We were able to cover a good bit of ground
17:46:55 13 today.

17:46:55 14 Tomorrow we start at 8:45. You should try to be
17:46:58 15 here early because we cannot start if everyone isn't
17:47:04 16 here. Try to be here on time. We'll get in a lunch
17:47:07 17 order, we'll make sure it's full lunch as opposed to
17:47:10 18 something that is more rushed, that we always have to do
17:47:14 19 on the first day.

17:47:15 20 And we will try to move as quickly as possible with
17:47:18 21 the testimony, so that you can have the evidence before
17:47:20 22 you as soon as possible.

17:47:23 23 Before you leave for the evening, bear in mind that
17:47:25 24 you're not to discuss this case with anyone.

17:47:28 25 If anyone attempts to discuss it with you, bring it

17:47:30 1 to the Court's attention promptly. We take that very
17:47:33 2 seriously.

17:47:34 3 Do not do any research into any matters that you
17:47:36 4 heard discussed here today. The only evidence you are
17:47:39 5 to consider is the evidence that comes in through the
17:47:41 6 witness stand or other items that I allow into evidence.

17:47:44 7 Please keep an open mind. The evidence is still
17:47:47 8 coming in.

17:47:48 9 The time to discuss and deliberate is not yet at
17:47:52 10 hand. That is at the end of the case after you get the
17:47:55 11 instructions on the law.

17:47:55 12 All right. With that, let me wish you a pleasant
17:47:58 13 evening, and we'll see you tomorrow at 8:45 a.m., we'll
17:48:02 14 start.

17:48:02 15 Have a good evening.

17:48:04 16 (Jury not present.)

17:48:54 17 THE COURT: All right, Counsel. We're going to
17:48:55 18 resume tomorrow at 8:45.

17:48:57 19 Let me remind counsel about a few things.

17:49:02 20 One, leading questions are generally not permitted
17:49:05 21 on direct exam. So I'm going to ask counsel to please
17:49:10 22 avoid using leading questions.

17:49:13 23 Also, fact witnesses -- and we have only had fact
17:49:18 24 witnesses here -- can only speak as to what they did,
17:49:20 25 what they observed, what they in some instances heard

17:49:24 1 from the defendant. They're not here to opine or to
17:49:28 2 give -- answer hypotheticals.

17:49:32 3 Let me remind counsel about cumulative evidence.
17:49:35 4 403 does not contemplate, in letter or spirit,
17:49:37 5 cumulative evidence. So if you have two witnesses who
17:49:43 6 testify to a certain thing, or three witnesses who have
17:49:47 7 done it, having the fourth, fifth and sixth witness say
17:49:50 8 the same thing gets us to the point where it's arguably
17:49:54 9 cumulative and again perhaps running afoul of 403.

17:50:05 10 Let me remind counsel that utterances of a party
17:50:10 11 opponent are non-hearsay. It's utterances of a party
17:50:16 12 opponent, not of your own -- the party that you
17:50:21 13 represent. And getting it into a question doesn't make
17:50:27 14 it any less objectionable.

17:50:28 15 Does the government plan to call Lescott,
17:50:35 16 Ms. Lescott?

17:50:37 17 MR. POTTER: Yes, Judge.

17:50:38 18 THE COURT: All right. Let me urge counsel if
17:50:38 19 you're going to bring in someone who is going to testify
17:50:41 20 about things -- if I recall, there were about five
17:50:44 21 questions about Ms. Lescott, who I suspect the
17:50:45 22 government is going to ask those identical questions.

17:50:48 23 So I urge counsel to just be as mindful of 403 and
17:50:55 24 not be cumulative, so that the jury can hear the
17:51:00 25 evidence in a way that is, that keeps their attention so

17:51:06 1 that they are as focused on the evidence as everyone
17:51:09 2 wants them to be.

17:51:10 3 Anything we need to cover, Attorney Potter?

17:51:15 4 MR. POTTER: Nothing, Judge.

17:51:16 5 THE COURT: Attorney Jupiter?

17:51:17 6 MR. JUPITER: No, Your Honor.

17:51:19 7 THE COURT: All right, Counsel. Have a
17:51:20 8 pleasant evening.

17:51:21 9 I'll see you tomorrow morning.

17:51:41 10 (Court in recess, 5:51 p.m.)

17:51:41 11

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14 CERTIFICATE

15

16 This document is hereby certified
17 to be a true and accurate transcript
18 of the foregoing proceedings.

19

20

21 /s_____

22

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24

25

Chandra Kean, RMR
Official Court Reporter

DATE